

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEREK J. MYERS, et al.,)
Plaintiffs,) Case No.
vs.) 2:23-cv-4102
PIKE COUNTY, et al.,)
Defendants.)

)

Deposition of: DEREK J. MYERS

Pursuant to: Notice

Date and Time: Wednesday, September 18, 2024
12:11 p.m.

Place: Mezibov Butler
615 Elsinore Place
Suite 105
Cincinnati, Ohio 45202

Reporter: Tracy L. Allen, RPR, RMR
Notary Public - State of Ohio

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1	A. I do not.	1	such as a newspaper, online only?
2	Q. Okay. Let's go through some	2	A. It was not hard copy.
3	educational background.	3	Q. Okay. So it was a news source that
4	Where did you go to high school?	4	was available online?
5	A. Multiple places.	5	A. Correct.
6	Q. Okay.	6	Q. Okay. And did you report on local
7	A. Miami Trace High School.	7	events, national events?
8	Q. Okay. And where is that located?	8	A. All -- both.
9	A. Washington Court House, Ohio.	9	Q. Okay. Now, after -- well, let me
10	Q. Okay.	10	ask this.
11	A. I transferred to Washington Senior	11	Do you still operate that
12	High School, and that's where I received my	12	independent organization?
13	diploma in 2011.	13	A. Not that independent organization.
14	Q. Okay. And do you have any education	14	Q. Okay. So when did Washington
15	beyond high school?	15	Blaze -- did it close?
16	A. Yes. I have a series of credits	16	A. It did. It was never -- it -- let's
17	from multiple universities, but ultimately	17	see. 2012 is when it operated. About
18	obtained a bachelor's in criminal justice from	18	18 months later.
19	Walden University.	19	Q. Okay. Did you have any other
20	Q. And where is Walden University at?	20	employees?
21	A. I believe they're headquartered in	21	A. I did not.
22	Maryland. It is an online institution.	22	Q. So after Washington Blaze stopped
23	Q. And what year did you receive your	23	operating, what did you -- what did you do
24	bachelor's in criminal justice?	24	after that?
25	A. Would have been earlier this year,	25	A. I had some various odd jobs.
	Page 7		Page 9
1	so 2024.	1	Q. Okay. Such as?
2	Q. Okay. Now, after -- let's back up.	2	A. I was a part-time security guard.
3	After high school in 2011, where did	3	Q. Okay. And after that?
4	you work? What was your first job after high	4	A. I believe I may have tried dabbling
5	school?	5	in public relations --
6	A. I was an internet marketing manager	6	Q. Okay.
7	for the local Ford dealership in Washington	7	A. -- as well as property management.
8	Court House.	8	Q. Now, when you worked in public
9	Q. Okay. And what were the dates that	9	relations, where did you work during that time
10	you worked there?	10	period?
11	A. November 2011 for about	11	A. Buffalo, New York.
12	eight months.	12	Q. Okay. What were you doing?
13	Q. Okay. And then what was your first	13	A. I was a PR specialist.
14	news job, news-related job, I should say?	14	Q. For who?
15	A. Sure.	15	A. Farrow PR.
16	I had started an independent	16	Q. And what is that?
17	organization called the Washington Blaze in	17	A. It's a public relations agency.
18	2012. And operated that for about 18 months in	18	Q. Okay. So -- so what were your job
19	Washington Court House as a local news source.	19	duties during that time?
20	Q. Okay. Was that a print news --	20	A. To handle public relations for
21	scratch that.	21	existing clients and to procure new clients.
22	Was it a news source that was	22	Q. Okay. And what type of clientele
23	printed?	23	did you have? Was it various organizations or
24	A. Can you define printed?	24	individuals?
25	Q. Was it printed hard copy, available	25	A. It was a broad spectrum.

<p style="text-align: right;">Page 10</p> <p>1 Q. Okay.</p> <p>2 A. For the most part, it was 3 individuals.</p> <p>4 Q. Okay. Now, were these individuals 5 in the political realm?</p> <p>6 A. I'm unsure of what their backgrounds 7 were.</p> <p>8 Q. Okay. So after public relations, 9 what did -- in Buffalo, New York, what did you 10 do?</p> <p>11 A. I wanted to become a television news 12 reporter.</p> <p>13 Q. Okay.</p> <p>14 A. So I took a job as a television news 15 reporter in Florida.</p> <p>16 Q. Okay. What news station did you 17 work for?</p> <p>18 A. The call letters are WCJB.</p> <p>19 Q. Does that stand for anything?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Okay. And you said that was in 22 Florida?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And how long did you work as 25 a -- was it a news anchor position?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Louisiana. I apologize.</p> <p>2 A. Yes, it was in Louisiana. 3 I'm sorry. Can you reask the 4 question?</p> <p>5 Q. Yes.</p> <p>6 What year or time frame were you in 7 Louisiana?</p> <p>8 A. 2015.</p> <p>9 Q. Okay. So let's kind of speed this 10 up a little bit.</p> <p>11 When did you become -- when did you 12 start working at Scioto Valley Guardian?</p> <p>13 A. Scioto Valley Guardian was launched 14 in 2019.</p> <p>15 Q. And who launched that?</p> <p>16 A. I did.</p> <p>17 Q. So at the time that it launched, 18 were you the only individual behind Scioto 19 Valley Guardian?</p> <p>20 A. I was.</p> <p>21 Q. Okay. Did it grow after you started 22 it? Meaning, did you have employees that 23 started working for you?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. How many employees did you</p>
<p style="text-align: right;">Page 11</p> <p>1 A. No.</p> <p>2 Q. Okay. What was the position?</p> <p>3 A. I was the chief bureau reporter, or 4 what's also known as a multimedia journalist, 5 for Marion County, Florida.</p> <p>6 Q. Okay. And after you finished that 7 job, what was your next job?</p> <p>8 A. I was the chief investigative 9 reporter at WVLA-TV in Baton Rouge, Louisiana.</p> <p>10 Q. Okay. And how long were you there?</p> <p>11 A. Three weeks.</p> <p>12 Q. And what were your job duties while 13 you were there?</p> <p>14 A. I was in charge of uncovering 15 political news and as well as investigative 16 news stories.</p> <p>17 Q. Okay. And after that position?</p> <p>18 Let me back up. What time frame 19 were you in Georgia?</p> <p>20 A. I wasn't in Georgia.</p> <p>21 Q. Oh, I'm sorry. Chief investigator.</p> <p>22 Where were you when you were the chief 23 investigator?</p> <p>24 MR. MEZIBOV: Louisiana.</p> <p>25 BY MS. SARK:</p>	<p style="text-align: right;">Page 13</p> <p>1 have at the -- at its peak?</p> <p>2 A. I want to estimate seven --</p> <p>3 Q. Okay.</p> <p>4 A. -- including myself.</p> <p>5 Q. And you -- scratch that.</p> <p>6 Since Scioto Valley Guardian began 7 operating, have you always been the editor in 8 chief?</p> <p>9 A. Until recently, yes.</p> <p>10 Q. And what caused that position 11 change?</p> <p>12 A. I took a dive into politics.</p> <p>13 Q. Okay. So when did you step away 14 from Scioto Valley Guardian?</p> <p>15 A. I believe it was October of 2023.</p> <p>16 Q. Okay. And, at that time, were there 17 still other employees with the Scioto Valley 18 Guardian?</p> <p>19 A. We had transitioned to 1099 20 contractors.</p> <p>21 Q. Okay. Is the Scioto Valley Guardian 22 still in operation as of today?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So it's my understanding that 25 you were present at the trial of George</p>

<p style="text-align: right;">Page 14</p> <p>1 Wagner, IV; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Were you present on behalf of the</p> <p>4 Scioto Valley Guardian?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So I'm going to hand you what</p> <p>7 I've labeled as Exhibit A.</p> <p>8 MS. SARK: And since we jumped</p> <p>9 around on exhibits, number-wise, I</p> <p>10 just -- oh, sorry. I don't -- I almost</p> <p>11 handed you my work copy. I just went</p> <p>12 ahead and used letters since --</p> <p>13 MR. ROBINSON: Sounds like a good</p> <p>14 idea.</p> <p>15 MR. MEZIBOV: You put letters on</p> <p>16 them?</p> <p>17 MS. SARK: Yes.</p> <p>18 MR. MEZIBOV: Can I make a</p> <p>19 suggestion?</p> <p>20 I think life is easier if we just</p> <p>21 use the numbers, but you don't have to</p> <p>22 call them defense exhibits, just numbers</p> <p>23 as we use them.</p> <p>24 I mean, if they're already marked --</p> <p>25 MS. SARK: Okay.</p>	<p style="text-align: right;">Page 16</p> <p>1 prior to today?</p> <p>2 A. I have.</p> <p>3 Q. Were you present the day the trial</p> <p>4 began?</p> <p>5 A. I was.</p> <p>6 Q. Do you recall what month that began?</p> <p>7 A. I do not.</p> <p>8 Q. Did you receive an order -- or</p> <p>9 excuse me.</p> <p>10 Did you receive a copy of this order</p> <p>11 prior to the trial beginning?</p> <p>12 A. I did not.</p> <p>13 Q. Okay. Did you receive a copy of</p> <p>14 this at all?</p> <p>15 A. Could you define receive?</p> <p>16 Q. Was -- did you see this order prior</p> <p>17 to Jake Wagner's testimony?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall when you saw this</p> <p>20 order?</p> <p>21 A. Yes. It was the first day of trial.</p> <p>22 Q. Okay. So the first day of trial you</p> <p>23 saw this order, correct?</p> <p>24 A. Allow me to rephrase.</p> <p>25 It was the first day of proceedings</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. MEZIBOV: Showing what's been</p> <p>2 previously marked Exhibit 1. It's less</p> <p>3 confusion, honestly, for everybody.</p> <p>4 MS. SARK: Can we go off the record</p> <p>5 just for a second?</p> <p>6 (Off the record.)</p> <p>7 MS. SARK: We can go back on the</p> <p>8 record.</p> <p>9 (Deposition Exhibit 20 was marked for</p> <p>10 identification.)</p> <p>11 BY MS. SARK:</p> <p>12 Q. So I've handed you what's labeled as</p> <p>13 Order Regarding Media Participation And General</p> <p>14 Decorum At All Proceedings, Including But Not</p> <p>15 Limited To Pretrials, Motion Hearings, Voir</p> <p>16 Dire, And/Or Trial; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And can you tell me what case</p> <p>19 this was filed in?</p> <p>20 A. The case number is 2018-CR-000155,</p> <p>21 State of Ohio versus George Washington Wagner.</p> <p>22 Q. And it was filed on July 1st, 2022;</p> <p>23 is that accurate?</p> <p>24 A. According to the time stamp here.</p> <p>25 Q. Okay. Have you seen this order</p>	<p style="text-align: right;">Page 17</p> <p>1 for the trial.</p> <p>2 Q. Okay.</p> <p>3 A. Might have been voir dire.</p> <p>4 Q. Okay. Did you read this in its</p> <p>5 entirety?</p> <p>6 A. I did.</p> <p>7 Q. Did you understand it?</p> <p>8 A. Yes.</p> <p>9 Q. I'm going to have you turn to</p> <p>10 page 3, and it would be paragraph 4.</p> <p>11 Do you care to read that first</p> <p>12 sentence for me out loud?</p> <p>13 A. Beginning on July 5th, 2022, all</p> <p>14 electronic devices, including but not limited</p> <p>15 to computers, cameras, cell phones, video</p> <p>16 phones, personal digital assistants, tape</p> <p>17 recorders or other recording or transmitting</p> <p>18 devices shall be barred from the courtroom</p> <p>19 and/or any other facility and/or locations</p> <p>20 where proceedings in this matter are held,</p> <p>21 except as provided in this Order.</p> <p>22 Q. Okay. Now, I think it actually</p> <p>23 says, shall be barred from the Courthouse,</p> <p>24 correct? Is that correct?</p> <p>25 A. I believe I read it as it stated.</p>

<p style="text-align: right;">Page 18</p> <p>1 It does say, device shall be barred from the 2 Courthouse.</p> <p>3 Q. Okay. So you were aware, before the 4 trial began, that electronic devices were not 5 permitted in the courtroom; is that correct?</p> <p>6 A. Not before the trial began.</p> <p>7 Q. Okay. There might be some 8 confusion.</p> <p>9 I thought you said that you received 10 this order on the first day proceedings began 11 for the trial.</p> <p>12 A. Before the gavel hit to bring in -- 13 or before the judge read into the record the 14 case caption --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- there was an order of this 17 presented to me on the day of the proceedings 18 where trial was commencing. It might have been 19 voir dire.</p> <p>20 When I say trial, I'm talking about 21 the -- from voir dire to --</p> <p>22 Q. Right.</p> <p>23 A. -- verdict.</p> <p>24 Q. Right. Right. We're not talking 25 about when witnesses started testifying. We're</p>	<p style="text-align: right;">Page 20</p> <p>1 devices that are specifically authorized by the 2 Court shall be permitted in the Courthouse 3 and/or Courtroom and/or any other facility 4 and/or locations in which proceedings in this 5 matter are held.</p> <p>6 Q. So did you personally ever petition 7 the Court for permission to bring in a still 8 camera, television camera, audio recording 9 device, or any other electronic device?</p> <p>10 A. I don't recall.</p> <p>11 Q. Would that be something that the 12 Court would have in its possession, if you 13 petitioned the Court?</p> <p>14 A. If they maintain their public 15 records correctly, I would imagine.</p> <p>16 Q. So how would you petition the Court? 17 Did it have to be in writing or could you 18 verbally petition the Court?</p> <p>19 A. I don't know the rules of procedure 20 for the Court. My standard procedure would 21 have been in writing.</p> <p>22 Q. Would you have a copy of that, as 23 well, if you petitioned the Court?</p> <p>24 A. If I petitioned the Court, I would 25 still have a copy.</p>
<p style="text-align: right;">Page 19</p> <p>1 talking about from the inception of State of 2 Ohio versus George Wagner, IV?</p> <p>3 A. Well, it wouldn't be the inception, 4 because that would have been several years 5 prior. But the actual trial itself, yes.</p> <p>6 I just can't recall if it was the 7 first day of voir dire or the first day of 8 opening statements.</p> <p>9 Q. Okay. So then you were aware, when 10 the trial began, that all electronic devices 11 were barred from the courthouse and any other 12 facility or location where the proceedings were 13 held, correct?</p> <p>14 A. I understood that is what the order 15 read.</p> <p>16 Q. Did -- let me back up. 17 Can you read the next two sentences 18 for me in paragraph 4, starting at Media 19 personnel, right where you left off?</p> <p>20 A. Media personnel may petition the 21 Court for permission to bring in still cameras, 22 television cameras and/or audio recording 23 devices for use in the Courtroom, as provided 24 in this Order.</p> <p>25 Only those cameras or recording</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. But you don't recall if you 2 petitioned the Court?</p> <p>3 A. I cannot recall.</p> <p>4 Q. Do you recall if, on behalf of a 5 media organization, you petitioned the Court 6 for permission to bring in a still camera, 7 television camera, audio recording device, or 8 any other electronic device?</p> <p>9 A. No, I can't recall.</p> <p>10 Q. Did you ever petition the Court to 11 use your cell phone as a recording device?</p> <p>12 A. Not that I recall.</p> <p>13 Q. So you were not permitted to have 14 your cell phone in the courtroom; is that 15 accurate?</p> <p>16 A. I believe the order stated that the 17 phones were not to be present in the courtroom. 18 That is correct.</p> <p>19 Q. So you were not permitted to have 20 your cell phone, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Did you ever bring your cell phone 23 into the courtroom while the trial was being 24 conducted?</p> <p>25 A. I did.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. How many times, if you had to guess?</p> <p>2 A. I know there was at least once.</p> <p>3 Q. Okay. Why does that one time stick</p> <p>4 out in your mind?</p> <p>5 A. That was the day that I had assumed</p> <p>6 the role of producer. And it sticks out in my</p> <p>7 mind because it was questioned as to why I had</p> <p>8 my cell phone in the courtroom, by the family.</p> <p>9 And I explained to the bailiff that</p> <p>10 I was acting in the capacity as the producer</p> <p>11 for what's known as the media pool.</p> <p>12 Q. I'm going to hand you what we'll</p> <p>13 mark as Exhibit 21.</p> <p>14 (Deposition Exhibit 21 was marked for</p> <p>15 identification.)</p> <p>16 BY MS. SARK:</p> <p>17 Q. I'm going to let you review this.</p> <p>18 Have you ever seen this document</p> <p>19 prior to today?</p> <p>20 A. I have.</p> <p>21 Q. Do you know who Jason Frazier is?</p> <p>22 A. I do.</p> <p>23 Q. Who is he?</p> <p>24 A. At the time of the proceedings in</p> <p>25 the Wagner trial, he was the bailiff for the</p>	<p style="text-align: right;">Page 24</p> <p>1 informed that no one has agreed to Mr. Myers'</p> <p>2 desire to supervise the camera pool. At about</p> <p>3 12:45 p.m., I received an email from Derek</p> <p>4 Myers with an attached -- attachment letter</p> <p>5 stating that members of the news media had</p> <p>6 agreed to Derek being the camera pool producer.</p> <p>7 So did you send an email with an</p> <p>8 attachment letter to Jason Frazier stating that</p> <p>9 members of the news media agreed to you being</p> <p>10 the camera pool producer?</p> <p>11 A. It was addressed to Judge Deering.</p> <p>12 Mr. Frazier was our liaison.</p> <p>13 Q. Uh-huh.</p> <p>14 A. When I say we, I mean the news</p> <p>15 media. He was our liaison. So it was</p> <p>16 addressed to Judge Deering. Emailed to</p> <p>17 Mr. Frazier to pass to Judge Deering.</p> <p>18 Q. Okay. So in that email, did you</p> <p>19 state that members of the news media had agreed</p> <p>20 to you being the camera pool producer?</p> <p>21 A. I don't recall what the email</p> <p>22 stated.</p> <p>23 MS. SARK: Okay. Can we go off the</p> <p>24 record for one second?</p> <p>25 (Off the record.)</p>
<p style="text-align: right;">Page 23</p> <p>1 Court.</p> <p>2 Q. Okay. And at the top, it says, On</p> <p>3 October 3rd, 2022, at about 12:00 p.m., I was</p> <p>4 contacted by members of the news media that</p> <p>5 Derek Myers, editor of the Scioto Valley</p> <p>6 Guardian, was attempting to assert control of</p> <p>7 the camera pool and label himself as a</p> <p>8 producer.</p> <p>9 So on October 3rd, were you the</p> <p>10 producer for the news media organizations?</p> <p>11 A. I had taken that position, yes.</p> <p>12 Q. When you say taken that position,</p> <p>13 what do you mean?</p> <p>14 A. Court TV had withdrawn from the</p> <p>15 trial --</p> <p>16 Q. Uh-huh.</p> <p>17 A. -- and the position was left vacant,</p> <p>18 and I assumed the role.</p> <p>19 Q. In order to become the producer, was</p> <p>20 there a process that had to occur?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. So no one else had to agree on who</p> <p>23 the producer was, correct?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Okay. The next sentence says, I was</p>	<p style="text-align: right;">Page 25</p> <p>1 BY MS. SARK:</p> <p>2 Q. So before we went off the record, I</p> <p>3 think you said you did not recall what the</p> <p>4 email that you sent to Judge Deering stated; is</p> <p>5 that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. If you look at the second</p> <p>8 page of Exhibit 21, do you have that packet?</p> <p>9 A. I do not. I was not provided a</p> <p>10 copy.</p> <p>11 Q. So if you look at that second page,</p> <p>12 have you seen this document before?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What is this document?</p> <p>15 A. This is a letter dated for</p> <p>16 October 3rd, 2022, by me to Judge Deering.</p> <p>17 Q. And what is -- what is this email</p> <p>18 concerning?</p> <p>19 A. This was a letter on Scioto Valley</p> <p>20 Guardian letterhead, attached as a PDF to the</p> <p>21 email, informing the court and Judge Deering</p> <p>22 that myself, on behalf of the Guardian, would</p> <p>23 be the television news pool producer in the</p> <p>24 courtroom.</p> <p>25 Q. Okay. In the second paragraph,</p>

<p style="text-align: right;">Page 26</p> <p>1 under Judge Deering, it says, Effective 2 immediately, Derek Myers of Scioto Valley 3 Guardian is the television pool producer in the 4 courtroom. He should be the Court's point of 5 contact for all television related activities 6 in the courtroom until further notice.</p> <p>7 Is that accurate, what that says?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. How did you become the 10 television pool producer?</p> <p>11 A. As previously stated, Court TV had 12 pulled out. They had, previously, a designated 13 reporter to be producer in the courtroom, who 14 acted as the one who would take full notes.</p> <p>15 They had their cell phone. They 16 were the ones who were in contact with 17 Mr. Frazier about who was opting in and opting 18 out of the trial proceeding so that could be 19 relayed downstairs to the media room.</p> <p>20 It also was to allow us, in the 21 media room, to know when breaks were occurring. 22 And they were also taking general notes.</p> <p>23 When that position became vacated, 24 there was no one sitting in that chair to relay 25 that information back downstairs to the media</p>	<p style="text-align: right;">Page 28</p> <p>1 behalf of Court TV.</p> <p>2 Q. When you became pool producer, did 3 you petition the Court to have your cell phone 4 in the courtroom?</p> <p>5 A. This letter was my way of informing 6 the Court that I would be the television pool 7 producer.</p> <p>8 And, as I mentioned, historically 9 speaking, the television pool producer had 10 always been permitted to have their phone in 11 the courtroom.</p> <p>12 Q. So no, you did not petition the 13 Court, correct, to have your court -- to have 14 your cell phone?</p> <p>15 A. Not to be difficult, but what is 16 your definition of petition?</p> <p>17 Q. Did you ask permission to have your 18 cell phone?</p> <p>19 A. On October 3rd, 2022?</p> <p>20 Q. Yes.</p> <p>21 A. I did not ask for permission, 22 because it was assumed and precedent had been 23 set that the television pool producer would 24 have their phone in the courtroom.</p> <p>25 Q. Did you ever petition the Court for</p>
<p style="text-align: right;">Page 27</p> <p>1 room. So that means if the cameras were turned 2 off due to an opt-out, there was no way for 3 anyone in the media room to know what was going 4 on because the pool producer was absent.</p> <p>5 Q. So as the television pool producer, 6 were you permitted to have your cell phone in 7 the courtroom?</p> <p>8 A. Historically, in that trial, the 9 television pool reporter -- producer, rather, 10 had always had their cell phone in the 11 courtroom. Again, as I mentioned, to be in 12 communication with Mr. Frazier and to relay 13 information downstairs.</p> <p>14 Q. Do you have -- scratch that.</p> <p>15 On October 3rd, 2022, was that the 16 first time that you were the pool producer?</p> <p>17 A. There was a second time, but I 18 believe that was the first time, yes.</p> <p>19 I know I had a brief fill-in while 20 Court TV, I think, may have gone to lunch or 21 something, and they had asked me to sit in.</p> <p>22 Q. Okay. So do you know if Court TV 23 petitioned the Court to have their cell phones 24 in the courtroom?</p> <p>25 A. I'm not aware of any filings on</p>	<p style="text-align: right;">Page 29</p> <p>1 permission to have your cell phone in the 2 courtroom?</p> <p>3 A. Not that I recall.</p> <p>4 Q. So if you go back to Jason Frazier's 5 Incident Report, the first page of that packet, 6 about halfway down, it says, At about 7 1:41 p.m., Deputy Terry Rose contacted me by 8 text to inform me that he observed Mr. Myers 9 with a cell phone in violation of the Court's 10 order.</p> <p>11 Do you recall that?</p> <p>12 A. Well, I was not aware of a text 13 message being sent until I read this incident 14 report during the discovery phases of this 1983 15 action.</p> <p>16 Q. And then it says, Deputy Rose 17 ordered Mr. Myers to leave the courtroom; is 18 that accurate?</p> <p>19 A. I don't recall who asked me to step 20 out, but that would have most likely been in 21 line with procedure, as Mr. Rose was tasked 22 with that duty.</p> <p>23 Q. And then the next sentence says, I 24 spoke with Mr. Myers outside the courtroom. He 25 demanded to know why he was removed for having</p>

<p style="text-align: right;">Page 30</p> <p>1 a cell phone that were allowed by others.</p> <p>2 Who else was permitted to have a</p> <p>3 cell phone?</p> <p>4 A. In the courtroom?</p> <p>5 Q. Yes.</p> <p>6 A. Multiple people. The attorneys for</p> <p>7 both sides, the judge, as well as any law</p> <p>8 enforcement member, bailiff, the SRT team that</p> <p>9 was transporting the victims' advocate for the</p> <p>10 family.</p> <p>11 But -- I understand your question,</p> <p>12 and to answer it in what you're looking for</p> <p>13 is -- what I mean by others is the other folks</p> <p>14 who had held the chair of television news</p> <p>15 producer.</p> <p>16 Q. Okay. And then Jason Frazier's</p> <p>17 incident report states, Mr. Myers and I argued</p> <p>18 over his assertion that he was the TV producer</p> <p>19 for the camera pool. I advised Mr. Myers that</p> <p>20 I had already spoken with other pool members</p> <p>21 who denied his claim.</p> <p>22 Do you remember this conversation</p> <p>23 with Mr. Frazier?</p> <p>24 A. I could not repeat verbatim what was</p> <p>25 said, but I do remember the encounter.</p>	<p style="text-align: right;">Page 32</p> <p>1 Is he -- when he refers to letters,</p> <p>2 he's speaking to the previous email that we</p> <p>3 have looked at that you sent to -- that was</p> <p>4 stated to be to Judge Deering?</p> <p>5 A. That is correct.</p> <p>6 Q. This email from Mr. Greiner</p> <p>7 continues, There was a misunderstanding in the</p> <p>8 pool. Mr. Myers believed he was acting as the</p> <p>9 pool producer, and for that reason, he had his</p> <p>10 cell phone with him. He meant no disrespect</p> <p>11 for the Court.</p> <p>12 Do you know what misunderstanding</p> <p>13 Mr. Greiner is referring to?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Can you explain what that</p> <p>16 misunderstanding was?</p> <p>17 A. Yeah. There are no written</p> <p>18 procedures for how a news pool is to operate.</p> <p>19 It's really sort of a jungle, so to speak.</p> <p>20 There are a lot of old school,</p> <p>21 unwritten rules in news media that it is a --</p> <p>22 the news pool is a group of news organizations</p> <p>23 who is to act as a team. And any decisions</p> <p>24 that are to affect the pool as a whole, usually</p> <p>25 there is some sort of vote taken that would</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Do you recall him informing you that</p> <p>2 other pool members denied that you were the</p> <p>3 pool producer?</p> <p>4 A. Again, I don't recall the language</p> <p>5 of the conversation, but I do remember the</p> <p>6 encounter.</p> <p>7 Q. Okay. If you'll look at the third</p> <p>8 page in that packet, have you ever seen this</p> <p>9 document before?</p> <p>10 A. I have.</p> <p>11 Q. Can you explain what it is, please?</p> <p>12 A. This is an email from my attorney at</p> <p>13 the time, Jack Greiner, to Jason Frazier.</p> <p>14 Q. Okay. And the email says, Good</p> <p>15 afternoon, Jason.</p> <p>16 Is that Jason Frazier, the bailiff?</p> <p>17 A. Yes.</p> <p>18 Q. For the Hocking County Common Pleas</p> <p>19 Court, correct?</p> <p>20 A. It's Pike County.</p> <p>21 Q. Or Pike County. I apologize. Pike</p> <p>22 County.</p> <p>23 A. That's okay.</p> <p>24 Q. Then it says, Please consider the</p> <p>25 letter from Derek Myers withdrawn.</p>	<p style="text-align: right;">Page 33</p> <p>1 allow the majority to rule, in favor or</p> <p>2 against, some sort of request or action that</p> <p>3 would affect the pool as a whole group.</p> <p>4 And so what Mr. Greiner's referring</p> <p>5 to here is, when he says, There was a</p> <p>6 misunderstanding in the pool, to the best of my</p> <p>7 recollection, there was some conversation in</p> <p>8 the pool room downstairs, that because the</p> <p>9 chair was vacant and there was lack of</p> <p>10 communication, I stood up in the pool room and</p> <p>11 said that I would be going upstairs to assume</p> <p>12 the role.</p> <p>13 And the misunderstanding comes</p> <p>14 from -- I believe there was another reporter in</p> <p>15 the room who was displeased with my taking</p> <p>16 control of the situation --</p> <p>17 Q. Okay.</p> <p>18 A. -- to fill the vacancy. So he</p> <p>19 complained to Mr. Frazier.</p> <p>20 Q. So I think you said earlier, and if</p> <p>21 I'm incorrect, please let me know. Court TV</p> <p>22 was the pool producer?</p> <p>23 A. Correct.</p> <p>24 Q. When they became the pool producer,</p> <p>25 was that voted upon by individuals or</p>

<p style="text-align: right;">Page 34</p> <p>1 organizations of the media?</p> <p>2 A. I'm not sure. I was not privy to a 3 lot of the things about the pool until the 4 first day of trial.</p> <p>5 Q. The first day of trial, were they 6 already the pool producer?</p> <p>7 A. Correct.</p> <p>8 Q. Was there any other organization or 9 individual that was the pool producer --</p> <p>10 A. Throughout --</p> <p>11 Q. -- besides yourself or Court TV?</p> <p>12 A. Throughout the duration of the 13 trial?</p> <p>14 Q. Uh-huh.</p> <p>15 A. I'm unsure. I can't recall.</p> <p>16 Q. Do you recall any other time that 17 the news organizations or individuals voted on 18 a pool producer?</p> <p>19 A. I do not recall voting on that.</p> <p>20 Q. Okay. Okay. Let's go back to the 21 media order, Exhibit 20.</p> <p>22 If you'll turn to page 5 for me, it 23 will be paragraph 10. And can you read the 24 first three sentences of -- yes, the first 25 three sentences of paragraph 10?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. I'm going to hand you what has been 2 labeled as Exhibit 22, I think.</p> <p>3 Have you seen this before?</p> <p>4 A. Assuming that it hasn't been 5 altered, I believe so.</p> <p>6 Q. Can you explain to me what it is?</p> <p>7 A. This is a judicial Notice to 8 Prospective Witnesses of Right to Object to 9 Being Filmed, Videotaped, Recorded or 10 Photographed, under Rule 12, under the 11 Superintendence.</p> <p>12 It's a form that was created by the 13 Pike County Court of Common Pleas for witnesses 14 to acknowledge their right to being filmed.</p> <p>15 Q. And right above Judge Deering's 16 signature line, it says, You are hereby 17 informed pursuant to Rule 12(C) of the Ohio 18 Rules of Superintendence that, as a witness in 19 the above-referenced case, you have the right 20 to object to being filmed, videotaped, recorded 21 or photographed.</p> <p>22 Is that accurate?</p> <p>23 A. That's what it states.</p> <p>24 Q. Okay. And what case was this in 25 that it's referencing above?</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Paragraph 10 is titled, Prohibited 2 Filming, Videotaping and/or Recording.</p> <p>3 It goes on to say, paragraph 10, 4 Each witness has the right to object to being 5 filmed, videotaped, recorded or photographed. 6 Any witness who so requests shall not be 7 recorded (either audio or video), televised or 8 photographed. During the testimony of the 9 objecting witness, all media personnel are 10 prohibited from employing any means to record 11 the witness in or out of the Courtroom.</p> <p>12 Q. So you read this paragraph prior to 13 Jacob Wagner's testimony, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And are you fine if I refer to him 16 as Jake Wagner, as well?</p> <p>17 A. That's fine. Yeah.</p> <p>18 Q. Okay. Were you aware that Jake 19 Wagner had opted out of being filmed, recorded, 20 photographed, and videotaped during his 21 testimony?</p> <p>22 A. I was.</p> <p>23 (Deposition Exhibit 22 was marked for 24 identification.)</p> <p>25 BY MS. SARK:</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Yeah. The case that we've been 2 talking about, State of Ohio V. George 3 Washington Wagner.</p> <p>4 Q. And are you familiar with Ohio Rules 5 of Superintendence 12(C)?</p> <p>6 A. I am.</p> <p>7 Q. Have you read Ohio Rule of 8 Superintendence 12(C)?</p> <p>9 A. I have.</p> <p>10 Q. Okay. I'm going to give you what 11 is -- what are we on, 20 --</p> <p>12 MR. MEZIBOV: 23.</p> <p>13 BY MS. SARK:</p> <p>14 Q. 23.</p> <p>15 (Deposition Exhibit 23 was marked for 16 identification.)</p> <p>17 MR. MEZIBOV: Is this Rule 12(C)?</p> <p>18 MS. SARK: Huh?</p> <p>19 MR. MEZIBOV: Is this Rule 12(C)?</p> <p>20 MS. SARK: It is.</p> <p>21 A. Are we still on the record?</p> <p>22 BY MS. SARK:</p> <p>23 Q. Yes, but we can go off if you need 24 to.</p> <p>25 Do you need to go off the record?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. No, it's fine.</p> <p>2 Q. Oh, okay.</p> <p>3 Now, at trial, witnesses were</p> <p>4 permitted to opt out of being filmed,</p> <p>5 videotaped, recorded, photographed, under Ohio</p> <p>6 Rule Superintendence 12(C); is that correct?</p> <p>7 A. I apologize. Could you rephrase</p> <p>8 your -- or could you restate your question?</p> <p>9 Q. Absolutely.</p> <p>10 At the trial of George Wagner, IV,</p> <p>11 witnesses were able to opt out of being filmed,</p> <p>12 videotaped, recorded, and photographed under</p> <p>13 Ohio Rule of Superintendence 12(C); is that</p> <p>14 accurate?</p> <p>15 A. Judge Deering had created the form,</p> <p>16 which you had previously just spoken about,</p> <p>17 which was Exhibit 22 --</p> <p>18 Q. Uh-huh.</p> <p>19 A. -- and it was interpreted by</p> <p>20 Judge Deering that Rule 12 allowed for a</p> <p>21 witness to do that. And by to do that, I mean</p> <p>22 opt in or out of a -- the ability to be</p> <p>23 recorded, videotaped, or photographed.</p> <p>24 Q. When you say that's how</p> <p>25 Judge Deering interpreted Rule 12(C), what do</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. Is that what the notes say,</p> <p>2 the commentary notes?</p> <p>3 A. That is what the commentary notes</p> <p>4 say, yes.</p> <p>5 Q. So you believe the judge can inform</p> <p>6 victims and witnesses of their right to object</p> <p>7 to being filmed, videotaped, recorded, and</p> <p>8 photographed, but that does not mean that they</p> <p>9 have the right to not be filmed, videotaped,</p> <p>10 recorded, or photographed?</p> <p>11 A. I apologize. Could you re-ask the</p> <p>12 question?</p> <p>13 Q. Sure.</p> <p>14 You believe, under Rule 12(C), that</p> <p>15 a judge can inform victims and witnesses of</p> <p>16 their right to object to being filmed,</p> <p>17 videotaped, recorded, and photographed, but</p> <p>18 that does not mean that they get to decide that</p> <p>19 they are not filmed, videotaped, recorded, or</p> <p>20 photographed; is that accurate?</p> <p>21 MR. ROBINSON: Object to form.</p> <p>22 BY MS. SARK:</p> <p>23 Q. Let me ask it a little bit easier.</p> <p>24 So you believe 12(C)(2) states that</p> <p>25 the judge can just inform victims and witnesses</p>
<p style="text-align: right;">Page 39</p> <p>1 you mean?</p> <p>2 A. It is not how I and other members of</p> <p>3 the media interpreted 12.</p> <p>4 Q. Okay. Can you turn to the second</p> <p>5 page for me, of Rule 12(C), and read section</p> <p>6 (C)(2) under Limitations?</p> <p>7 A. C is titled Limitations. Two says,</p> <p>8 The judge shall inform victims and witnesses of</p> <p>9 their right to object to being filmed,</p> <p>10 videotaped, recorded, or photographed.</p> <p>11 Q. And then under the Commentary, under</p> <p>12 Rule 12(A) Presiding Judge, that second</p> <p>13 paragraph. It's just a sentence, but can you</p> <p>14 read that for me as well?</p> <p>15 A. 12(A) Presiding Judge. The judge</p> <p>16 assigned to the trial or hearing shall --</p> <p>17 Q. I'm sorry. The second paragraph</p> <p>18 down. Just the one sentence.</p> <p>19 A. Okay. The filming, videotaping,</p> <p>20 recording, or taking of photographs of victims</p> <p>21 or witnesses who object shall not be permitted.</p> <p>22 Q. So under Rule 12(C), if a witness</p> <p>23 objects to being filmed, videotaped, recorded,</p> <p>24 or photographed, it is not permitted, correct?</p> <p>25 A. That is not what 12(C) says.</p>	<p style="text-align: right;">Page 41</p> <p>1 of their right to object to being filmed,</p> <p>2 videotaped, recorded, or photographed, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. But you don't believe that gives the</p> <p>5 right to victims or witnesses to decide that</p> <p>6 they do not get to be filmed, videotaped,</p> <p>7 recorded, or photographed?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. So this issue was actually</p> <p>10 litigated in the Fourth District Court of</p> <p>11 Appeals; is that correct?</p> <p>12 A. It was.</p> <p>13 Q. Can you tell me a little bit about</p> <p>14 that case?</p> <p>15 A. Certainly.</p> <p>16 Several members of the pool media,</p> <p>17 including the Scioto Valley Guardian, retained</p> <p>18 Jack Greiner and his law firm, Graydon, to file</p> <p>19 a petition.</p> <p>20 I believe it was -- it may have been</p> <p>21 a prohibition or it was a mandate, as I can't</p> <p>22 recall, but it was one of the two, to limit</p> <p>23 some rules that were imposed by the judge. One</p> <p>24 of them was the filming and photographing of</p> <p>25 evidence that was in the court proceedings.</p>

<p style="text-align: right;">Page 42</p> <p>1 Specifically, there was a bloody 2 shoe print that the prosecution was upset that 3 the news media had published. And the news 4 media felt we were allowed to record that and 5 publish it. And many members of the media, 6 including the Guardian, published the bloody 7 shoe print.</p> <p>8 And when we, as the news media, were 9 verbally reprimanded by the Court, I believe it 10 was off the record, that it was inappropriate 11 for us to do so.</p> <p>12 Members of the news media voted, 13 with their news managers' blessings, to retain 14 the law firm to petition the Fourth District to 15 allow us to record evidence that was being 16 shown on the television, particularly the more 17 gruesome evidence.</p> <p>18 The prosecution was picking and 19 choosing, at the time, what evidence could and 20 could not be filmed by us. They would look at 21 the pool operator and say, do not film this. 22 And the media felt that that was inappropriate.</p> <p>23 So Mr. Greiner, on behalf of the -- 24 I believe there were seven to maybe nine 25 members who were part of that case caption, who</p>	<p style="text-align: right;">Page 44</p> <p>1 that it gave witnesses and victims the ability 2 to decide not to be filmed, videotaped, 3 recorded, and photographed, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. So did you believe that you could go 6 against a witness who opts out of being filmed, 7 videotaped, recorded, or photographed?</p> <p>8 A. I never believed that a witness was 9 allowed to opt in or out, and I argued that in 10 the petition.</p> <p>11 Section (C) states that they shall 12 be informed. It does not state that they have 13 the option to pick one way or the other.</p> <p>14 Q. But the commentary notes do state 15 that the filming, videotaping, recording, or 16 taking of photographs of victims or witnesses 17 who object shall not be permitted, correct?</p> <p>18 A. The commentary notes state that, but 19 that's not the rule.</p> <p>20 Q. So you believed that even if a 21 witness filled out the opt-out form, that 22 members of the media were still allowed to 23 film, videotape, record, or photograph them?</p> <p>24 A. That is what my petition to the 25 Fourth District requested to be affirmed, yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 litigated the matter before the Fourth 2 District, asking for permission, and the Fourth 3 District ruled in our favor, that we were 4 allowed to record the evidence.</p> <p>5 Q. But that one didn't -- that case did 6 not deal specifically with Rule 12(C), did it?</p> <p>7 Wasn't there a case that you filed 8 on your own in the Fourth District Court of 9 Appeals?</p> <p>10 A. I did file a pro se case in 12 -- 11 regarding Rule 12. And I'm just -- give me a 12 moment here.</p> <p>13 Q. Uh-huh.</p> <p>14 A. Just to speed things up here, 15 because I'm understanding the question.</p> <p>16 I filed a petition in the Fourth 17 District asking the Fourth District to rule in 18 favor of my request, to allow us to have 19 hearings and to rule that probable cause be 20 found as to why the person who opted in or out 21 from the witness stand could or should not be 22 recorded, based on the grounds that it may 23 affect the integrity of the trial.</p> <p>24 Q. So let me ask this. Under Rule 25 12(C)(2), you said that you did not believe</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. But did you believe that?</p> <p>2 A. Yes.</p> <p>3 Q. And in the case that you filed on 4 your own, did you have an attorney represent 5 you?</p> <p>6 A. I did not.</p> <p>7 Q. And you filed that against 8 Judge Deering, correct?</p> <p>9 A. That is correct. I believe you were 10 on the phone for that hearing.</p> <p>11 Q. I was.</p> <p>12 And Judge Deering, at that time, was 13 the judge who was handling the George 14 Wagner, IV case, correct?</p> <p>15 A. That is correct.</p> <p>16 (Deposition Exhibit 24 was marked for 17 identification.)</p> <p>18 BY MS. SARK:</p> <p>19 Q. I'm going to hand you what's been 20 marked as Exhibit 24.</p> <p>21 Have you ever seen this document 22 before?</p> <p>23 A. I have.</p> <p>24 Q. Okay. And can you explain to me 25 what it is?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. May I have a moment to review it?</p> <p>2 Q. Absolutely.</p> <p>3 A. May you ask your question again,</p> <p>4 please?</p> <p>5 Q. Yes. Can you tell me what this</p> <p>6 judgment entry is regarding?</p> <p>7 A. Yes. This is a judgment entry for</p> <p>8 the Court of Appeals in the Fourth District,</p> <p>9 Case Number 22917.</p> <p>10 It's a judgment entry signed by the</p> <p>11 administrative judge, Michael Hess. It's</p> <p>12 revising a previous order that had been issued</p> <p>13 on October 25th.</p> <p>14 Q. And this is in the case of State of</p> <p>15 Ohio, ex rel. Derek J. Myers versus Honorable</p> <p>16 Randy D. Deering; is that correct?</p> <p>17 A. Correct.</p> <p>18 And just for the record, it was</p> <p>19 pertaining to the petition that we just spoke</p> <p>20 of momentarily, a few moments ago, regarding</p> <p>21 the Wagner case. Yes.</p> <p>22 Q. And this is the case that you filed</p> <p>23 on your own, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. You did not have an attorney</p>	<p style="text-align: right;">Page 48</p> <p>1 issued by the Fourth District. And I don't,</p> <p>2 obviously, have it in front of me, but, to the</p> <p>3 best of my recollection, it was that</p> <p>4 Judge Deering was ordered to hold, essentially,</p> <p>5 what I would call a probable cause hearing as</p> <p>6 to why a witness who would object if their</p> <p>7 videotaping would -- or audio recording or</p> <p>8 photographing would -- how it would impact the</p> <p>9 integrity of the trial. And he was then tasked</p> <p>10 with holding a hearing to find out the probable</p> <p>11 cause as to why it would or would not affect</p> <p>12 the integrity of the trial.</p> <p>13 Mr. Wagner was on the stand</p> <p>14 preparing to take testimony on the date of</p> <p>15 October 26, as time stamped. And I believe you</p> <p>16 were on the phone for that as well.</p> <p>17 The -- Judge Deering was holding a</p> <p>18 hearing, as ordered in the previous entry from</p> <p>19 Michael Hess of the Fourth District, as to the</p> <p>20 probable cause, if it would impact the</p> <p>21 proceedings if Mr. Wagner objected.</p> <p>22 Mr. Wagner asserted his right to not</p> <p>23 be filmed, according to Judge Deering. And</p> <p>24 Judge Deering ultimately ruled that it would</p> <p>25 impact the integrity of the trial if</p>
<p style="text-align: right;">Page 47</p> <p>1 represent you, correct?</p> <p>2 A. Not at the time of filing.</p> <p>3 Q. Okay. So the first three sentences</p> <p>4 of this order state, This entry revises our</p> <p>5 previous order issued October 25th, 2022 as it</p> <p>6 relates to the photographing and recording of</p> <p>7 witnesses who object to such recording pursuant</p> <p>8 to Superintendence Rule 12(C). The filming,</p> <p>9 videotaping, recording, or taking of</p> <p>10 photographs of victims or witnesses who object</p> <p>11 shall not be permitted. The trial judge is not</p> <p>12 required to hold a hearing or make evidentiary</p> <p>13 findings; is that accurate?</p> <p>14 A. That is what it reads.</p> <p>15 Q. So when you petitioned the Court</p> <p>16 with your own interpretation of Superintendence</p> <p>17 Rule 12(C), this entry holds that a witness or</p> <p>18 victim can make the decision not to be filmed,</p> <p>19 videotaped, recorded, or photographed, correct?</p> <p>20 A. That is correct.</p> <p>21 But, also, for the record, there</p> <p>22 was, as noted in the very first sentence of</p> <p>23 Exhibit 24, This entry revises our previous</p> <p>24 order.</p> <p>25 So there had been a previous order</p>	<p style="text-align: right;">Page 49</p> <p>1 Mr. Wagner -- excuse me -- if Mr. -- Jake</p> <p>2 Wagner was going to be recorded.</p> <p>3 At the conclusion of that hearing,</p> <p>4 we took a brief recess. As we were walking out</p> <p>5 of the courtroom, various members of the news</p> <p>6 media, including myself, were served a copy of</p> <p>7 this revised entry that withdrew the process</p> <p>8 that had just taken place.</p> <p>9 Q. Okay. So the first entry, the first</p> <p>10 decision that was made by the Fourth District</p> <p>11 Court of Appeals was on October 25th, 2022,</p> <p>12 correct?</p> <p>13 A. I don't recall the date that they --</p> <p>14 that the first order was issued. It was --</p> <p>15 Q. Well, the first sentence of this</p> <p>16 judgment entry says, This entry revises our</p> <p>17 previous order issued October 25th, 2022; is</p> <p>18 that accurate?</p> <p>19 A. Okay. So to answer your question,</p> <p>20 based on Judge Hess, it would have been -- the</p> <p>21 first order issued was on October 25th.</p> <p>22 Q. And then what is the time stamp date</p> <p>23 of the current judgment entry that's in front</p> <p>24 of you?</p> <p>25 A. The 26th of October 2022, so a day</p>

<p style="text-align: right;">Page 50</p> <p>1 later.</p> <p>2 Q. So a day later, this judgment entry 3 that you have in front of you, Exhibit 24, was 4 entered, correct?</p> <p>5 A. That's correct, overruling the 6 previous one on the 25th.</p> <p>7 Q. Okay. And the Fourth District Court 8 of Appeals upheld Judge Deering's 9 interpretation of Superintendence Rule 12(C) by 10 finding that the filming, videotaping, 11 recording, and photographing of victims or 12 witnesses who object is permitted?</p> <p>13 A. After I received this judgment 14 entry, I no longer pursued the litigation in 15 that case, so I'm not sure exactly what the 16 outcome was.</p> <p>17 I never ruled -- or I never read the 18 final judgment entry of the case that came 19 several weeks later.</p> <p>20 Q. But this judgment entry in front of 21 you says, Pursuant to Superintendence Rule 22 12(C), the filming, videotaping, recording, or 23 taking of photographs of victims or witnesses 24 who object shall not be permitted; is that 25 accurate?</p>	<p style="text-align: right;">Page 52</p> <p>1 filming, videotaping, recording, or taking of 2 photographs of victims or witnesses who object 3 shall not be permitted; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. And it also says, The trial 6 court judge is not required to hold a hearing 7 or make evidentiary findings; is that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. I'm going to show you what 10 I've labeled as --</p> <p>11 Well, let me ask this first. 12 Did Jake Wagner opt out of being 13 filmed, videotaped, recorded, and/or 14 photographed?</p> <p>15 A. He did. (Deposition Exhibit 25 was marked for 16 identification.)</p> <p>17 BY MS. SARK:</p> <p>18 Q. Okay. I'm going to hand you what's 19 marked as Exhibit 25. 20 Have you ever seen this document 21 before?</p> <p>22 A. I don't recall.</p> <p>23 Q. Okay. Can you provide the date that 24 Mr. Wagner signed this at the bottom?</p>
<p style="text-align: right;">Page 51</p> <p>1 A. In this judgment entry, that is 2 correct. And then we would have to go on. The 3 pleadings of the complaint would have to be 4 litigated.</p> <p>5 So this was just a request for a 6 temporary restraining order, essentially. This 7 wasn't the final outcome of that case.</p> <p>8 Q. So did you appeal this decision?</p> <p>9 A. I did not. I stated, once this came 10 out, I withdrew from the proceedings. And I 11 believe, as you may recall more than I, since 12 you were counsel on that case, I simply just 13 did not respond to any filings.</p> <p>14 And I believe the Court ended up 15 ruling in favor of Judge Deering, based on the 16 docket that I read. I never read the actual 17 entries.</p> <p>18 Q. So there weren't any other hearings 19 or motions filed after this judgment entry, to 20 your knowledge?</p> <p>21 A. There were. Not by me. It was by 22 your firm and others, but I didn't read them.</p> <p>23 Q. Okay. So, to your knowledge, the 24 last judgment entry that you read said, 25 Pursuant to Superintendence Rule 12(C), the</p>	<p style="text-align: right;">Page 53</p> <p>1 A. According to Exhibit 25, the 2 signature of the witness, which appears to be 3 written in by his attorney, Gregory Meyers, is 4 dated for 10-24-2022.</p> <p>5 Q. And pursuant to this form, Edward 6 Jake Wagner opted out of being filmed, 7 videotaped, recorded, or photographed, correct?</p> <p>8 A. Correct. It says, That I do object 9 to being filmed, videotaped, recorded, or 10 photographed.</p> <p>11 Q. Okay. Now, it's my understanding 12 that you were not present for all of Jake 13 Wagner's testimony; is that accurate?</p> <p>14 A. That is correct.</p> <p>15 Q. And you were actually out of the 16 country during part of his testimony, correct?</p> <p>17 A. I was.</p> <p>18 Q. What days did you leave the country 19 in October of 2022?</p> <p>20 A. I don't have my flight itinerary in 21 front of me, but I believe I left Thursday of 22 that week, prior to the 24th.</p> <p>23 Q. Let me hand you what we will mark as 24 Exhibit 26.</p> <p>25</p>

	Page 54		Page 56
1	(Deposition Exhibit 26 was marked for	1	and recordings in response to the request for
2	identification.)	2	production of documents?
3	BY MS. SARK:	3	A. Is there a particular number that
4	Q. Does this look like a copy of your	4	you're referring to?
5	flight itinerary from October of 2020 -- well,	5	Q. Well, so defendants sent to you,
6	when you left the country in October of 2022?	6	request for production of documents.
7	A. That is correct.	7	A. Yes.
8	Q. Okay. Can you state for me what	8	Q. And I think there were six all
9	days you were gone in October of 2022?	9	together? Yes, six.
10	A. Gone from where?	10	A. I'm just looking here. It says,
11	Q. The country. Out of the country.	11	provide a -- okay, I see here. Request for
12	A. Oh, yes. So I left Columbus, Ohio	12	production of documents. All right. Provide
13	on October 20th, 2022, and I returned back to	13	copies of any documents reviewed. Okay.
14	Columbus, Ohio on Tuesday, October 25th, 2022.	14	Q. Did -- did you provide documents
15	Q. And according to this itinerary, you	15	and/or recordings in response to the request
16	landed in Columbia on October 21st, I believe?	16	for production of documents?
17	A. It was shortly after midnight. So,	17	A. We did.
18	yes, it legally was the 21st.	18	Q. Okay. Did you review the responses,
19	Q. Okay. And then on Monday, the 24th,	19	prior to providing it to me, to ensure their
20	October 24th, 2022, you left Columbia, correct?	20	accuracy?
21	A. The legal date was 11:45 p.m. on the	21	A. Yes. I typed them.
22	24th.	22	Q. Okay. I'm going to have you look at
23	Q. Did you go by yourself?	23	Interrogatory Number 2. It is on page 4 -- or
24	A. I did.	24	page 3. I'm sorry.
25	Q. I'm going to show you what we will	25	And Interrogatory Number 2 states:
	Page 55		Page 57
1	mark as Exhibit 27.	1	In your Opposition to Defendants' Motion for
2	(Deposition Exhibit 27 was marked for	2	Judgment on the Pleadings, (Doc.#: 17), you
3	identification.)	3	state that you were out of the country on
4	MS. SARK: Can we go off the record	4	October 24th, 2022.
5	for a second?	5	Provide the location where you were
6	(Off the record.)	6	on October 24th, 2022, the dates you were at
7	MS. SARK: We can go back on the	7	the aforesaid location, when you returned to
8	record.	8	Pike County, Ohio, and the purpose for
9	BY MS. SARK:	9	traveling out of town.
10	Q. Okay. I've handed you what's been	10	And your response was: I flew to
11	labeled as Exhibit 27; is that accurate, 27?	11	Bogota, Columbia on October 20th, 2022, and
12	A. Yes.	12	returned to Pike County on October 26th, 2022.
13	Q. Yes.	13	The purpose of my travel was to receive dental
14	And those are entitled, Plaintiff	14	work and to visit friends.
15	Responses to Defendants' First Set of Requests	15	Is this an accurate representation
16	for Admissions, Interrogatories, and Requests	16	of Interrogatory Number 2?
17	for Production of Documents to Plaintiff.	17	A. Yes.
18	Have you seen this document prior to	18	Q. What dental work did you have done?
19	today?	19	MR. MEZIBOV: A deposition is not
20	A. Yes.	20	supposed to be like pulling teeth.
21	Q. Did you help to prepare the	21	MR. ROBINSON: Can we go off the
22	responses in this document?	22	record for a second?
23	A. I did prepare the responses in this	23	(Off the record.)
24	document.	24	BY MS. SARK:
25	Q. Okay. Did you gather the documents	25	Q. So let me ask you this. Did your

<p style="text-align: right;">Page 58</p> <p>1 flight times change at all from the time you 2 booked the flights to the time the flights 3 actually happened?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Okay. So according to your 6 itinerary that you provided to me, you landed 7 in Columbus on October 25th, 2022, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Did you, on that same day, go back 10 to the Pike County Courthouse?</p> <p>11 A. I did not.</p> <p>12 Q. And you went -- scratch that. 13 You went back to Pike County on 14 October 26th, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. And, at that time, did you go to the 17 trial for George Wagner, IV?</p> <p>18 A. I did, yes. Yes, I did.</p> <p>19 Q. Do you recall if Jake Wagner was 20 still testifying that day?</p> <p>21 A. He was. That was the date that you 22 were on the phone and we held the first 23 preliminary, so to speak, preliminary hearing 24 from the first order of the Fourth District 25 saying that Judge Deering had to have hearings.</p>	<p style="text-align: right;">Page 60</p> <p>1 that you received from an unidentified source. 2 And the response was, Responsive 3 recording attached.</p> <p>4 A. That is correct.</p> <p>5 Q. What I received was a 6 10-minute-13-second audio recording, which I 7 will bring up now.</p> <p>8 A. May we go off the record?</p> <p>9 MS. SARK: Yeah, that's fine.</p> <p>10 MR. MEZIBOV: If you want to talk to 11 Emmett, yes. 12 (Off the record.) 13 MS. SARK: Are we back on?</p> <p>14 BY MS. SARK:</p> <p>15 Q. So we will label this as Exhibit 28. 16 And this is what I received in response to 17 request for Production of Documents Number 3. 18 (The video was played.)</p> <p>19 BY MS. SARK:</p> <p>20 Q. And I just want to play this for a 21 minute so we can get -- to make sure that it's 22 the same audio recording that we were both 23 referring to. 24 So is this the recording you 25 received in its entirety from the unidentified</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. So the recording you received of 2 Jake Wagner's testimony, did you receive that 3 prior to going into the trial on October 26th?</p> <p>4 A. I had received the copy some time 5 between the late evening of the 25th and the 6 morning of the 26th.</p> <p>7 So going into the hearing on the 8 26th, I would have had, in my possession, that 9 recording, yes.</p> <p>10 Q. And you were -- you published that 11 recording online, correct?</p> <p>12 A. A condensed version, yes.</p> <p>13 Q. Okay. You say a condensed version, 14 so what did you receive?</p> <p>15 A. What appeared to be two full days of 16 testimony.</p> <p>17 Q. So you received recordings of Jake 18 Wagner's testimony, in its entirety, from 19 October 24th and October 25th, 2022?</p> <p>20 A. That is correct.</p> <p>21 Q. If you'd go back to your responses 22 to request for production of documents, on 23 Request for Production of Documents Number 3, 24 page 5, I said, Provide a copy of the audio 25 recording of Edward Jacob Wagner's testimony</p>	<p style="text-align: right;">Page 61</p> <p>1 source?</p> <p>2 A. It is not.</p> <p>3 Q. Why was I not provided a copy of the 4 audio recording of Jake's testimony that you 5 received from the unidentified source?</p> <p>6 A. Well, it was -- your Request for 7 Production Document Number 3 came well after 8 the publication of the recording.</p> <p>9 During the date of publication, 10 which was October 2022, when I received the 11 recording, to the date of your Request for 12 Production of Document Number 3, the entire 13 recording two-day audio, that I had said 14 earlier that appeared to be two full days of 15 testimony, was no longer in my possession.</p> <p>16 And the only thing that remained in 17 my possession, pertaining to any audio 18 recording of this matter, was what you were 19 provided.</p> <p>20 Q. So why was it no longer in your 21 possession?</p> <p>22 A. I believe that that laptop had been 23 broken. We had just gotten a new one and lost 24 several files. I'm not exactly sure what 25 happened.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. What laptop was it on? Let me ask 2 that again.</p> <p>3 What laptop were -- was the -- were 4 the recordings on, from October 24th and 25th?</p> <p>5 A. When I had received them, I placed 6 them on my work laptop, which was a MacBook.</p> <p>7 Q. Is that the laptop that was seized 8 in this case?</p> <p>9 A. It was not.</p> <p>10 I no longer have that MacBook. Like 11 I said, it broke. I lost several files, 12 including the full version of Mr. Wagner's 13 testimony.</p> <p>14 Q. And you didn't make any backup 15 copies of that recording -- the recordings that 16 the unidentified source gave you?</p> <p>17 A. Well, at the time, there may have 18 been, but they were all stored locally on that 19 computer.</p> <p>20 I believe, you know, when -- I 21 personally had possession of the audio, and I 22 personally oversaw the condensed version.</p> <p>23 So there were duplicates made, yes, 24 but they were all locally stored on the 25 computer that no longer exists.</p>	<p style="text-align: right;">Page 64</p> <p>1 will be combined analytics instead of a 2 separate analytical report.</p> <p>3 And so I believe the Derek Myers 4 Facebook page, which was a professional page 5 that I used for journalism work, had permission 6 to cross-share it, and I believe I did 7 cross-share it.</p> <p>8 Q. Was it common that any article you 9 shared on the Guardian you also shared on your 10 Facebook -- your personal Facebook page?</p> <p>11 A. Well, let's clarify what you mean by 12 personal Facebook page.</p> <p>13 Q. On your Derek J. Myers Facebook 14 page, was it common to share articles that you 15 had posted on the Guardian?</p> <p>16 A. The Derek Myers professional 17 Facebook page is just that, a professional 18 Facebook page. And it was very common, on a 19 daily basis, routinely to share and cross-post, 20 yes.</p> <p>21 Q. Did you have any other Facebook 22 pages for yourself, personally, besides the 23 Derek J. Myers Facebook page?</p> <p>24 A. Yes. You have to have a Facebook 25 account to access a professional page.</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Do you recall when that laptop 2 broke?</p> <p>3 A. I do not recall, but I do know that 4 it was before the production request.</p> <p>5 Q. Okay. You published the recording 6 of Jake Wagner's testimony in what you called a 7 condensed version, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Where did you publish that?</p> <p>10 A. It was uploaded to, I believe, what 11 we called in -- on the Scioto Valley Guardian's 12 website, we have a platform called Brid Video 13 that hosts our video.</p> <p>14 It was uploaded to that. And then 15 it was also, I believe, uploaded to social 16 media, such as Facebook and, perhaps, YouTube.</p> <p>17 Q. Was it posted on your personal 18 Facebook page?</p> <p>19 A. I had cross-shared it, I believe.</p> <p>20 Q. What do you mean by cross-shared it?</p> <p>21 A. Facebook has a feature that one page 22 will give permission to another page to share a 23 video. That way the analytics are aligned.</p> <p>24 So if you watch a video on one page 25 and a video on the second page, the analytics</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. So how many Facebook accounts 2 did you have -- could you access? Let me ask 3 that.</p> <p>4 A. I had one active at the time.</p> <p>5 Q. Which was?</p> <p>6 A. I believe it was Derek Joel or Joel 7 Derek.</p> <p>8 Q. And that was your personal Facebook 9 page?</p> <p>10 A. That is correct.</p> <p>11 Q. And then your professional Facebook 12 page was Derek J. Myers?</p> <p>13 A. It was just Derek Myers, but, yes.</p> <p>14 Q. Okay. Did you post or share the 15 article providing the testimony of Jake Wagner 16 on your personal Facebook page?</p> <p>17 A. I don't recall.</p> <p>18 Q. At the time you published the 19 article with the audio recording, you were 20 aware that Jake Wagner had opted out of being 21 recorded, filmed, videotaped, and photographed, 22 while testifying, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Was there any exception that you 25 were aware of that would permit an individual</p>

<p style="text-align: right;">Page 66</p> <p>1 or member of the media to record him?</p> <p>2 A. No.</p> <p>3 Q. Okay. I'm going to hand you what</p> <p>4 has been labeled as Exhibit 28.</p> <p>5 THE REPORTER: No.</p> <p>6 MS. SARK: Or 29. Sorry. You're</p> <p>7 right, yeah.</p> <p>8 THE REPORTER: 28 was the audio.</p> <p>9 (Deposition Exhibit 29 was marked for</p> <p>10 identification.)</p> <p>11 BY MS. SARK:</p> <p>12 Q. Okay. Have you seen this document</p> <p>13 before?</p> <p>14 A. Yes. This is a document that we</p> <p>15 provided to you.</p> <p>16 Q. Okay. And it is reflected at the</p> <p>17 bottom, Bates stamp Myers 33 through Myers 37,</p> <p>18 correct?</p> <p>19 A. That is correct. I'm not sure if</p> <p>20 that's our stamp or yours, but, yes.</p> <p>21 Q. The second page in this article --</p> <p>22 let me find the paragraph. The second</p> <p>23 paragraph, it states, Jake Wagner chose not to</p> <p>24 be video or audio recorded by news media.</p> <p>25 I'm going to stop there.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. That is accurate.</p> <p>2 Q. So the Fourth District Court of</p> <p>3 Appeals' opinion, that we just looked at,</p> <p>4 Exhibit 24 --</p> <p>5 A. Yes.</p> <p>6 Q. -- that specifically states that the</p> <p>7 filming, videotaping, recording, or taking</p> <p>8 photographs of victims or witnesses who object</p> <p>9 shall not be permitted. The trial court judge</p> <p>10 is not required to hold a hearing or make</p> <p>11 evidentiary findings.</p> <p>12 Is that what that judgment entry</p> <p>13 states?</p> <p>14 A. It does state that. But it also</p> <p>15 states that it's a revision to a previous order</p> <p>16 from October 25th.</p> <p>17 And the order on October 25th said</p> <p>18 that Derek Myers had won a restraining order,</p> <p>19 essentially -- I'm paraphrasing, but it says --</p> <p>20 and I'm summarizing the order, but the previous</p> <p>21 order from October 25th says that Judge Deering</p> <p>22 had to hold the hearing.</p> <p>23 In fact, Judge Deering did hold a</p> <p>24 hearing and you were on speakerphone for that</p> <p>25 hearing.</p>
<p style="text-align: right;">Page 67</p> <p>1 Isn't it accurate that no one was</p> <p>2 permitted to video or audio record Jake</p> <p>3 Wagner's testimony?</p> <p>4 A. I wouldn't say no one. The court</p> <p>5 reporter was recording his audio.</p> <p>6 Q. Okay. Besides the court reporter,</p> <p>7 was there anyone, that you knew of, that was</p> <p>8 permitted to video or audio record Jake</p> <p>9 Wagner's testimony?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. So it wasn't just the news media</p> <p>12 that was not allowed to video or audio record,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then the article states, Derek</p> <p>16 Myers -- it's in that same sentence. Derek</p> <p>17 Myers won a temporary restraining order which</p> <p>18 forced presiding Judge Randy Deering to allow</p> <p>19 the filming of witnesses unless the judge felt</p> <p>20 the filming would compromise the integrity of</p> <p>21 the trial.</p> <p>22 This isn't -- that's not accurate,</p> <p>23 correct?</p> <p>24 A. Let me read it for myself, please.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. And you said you received a copy of</p> <p>2 this judgment entry, you believe, after you</p> <p>3 exited the court for that hearing on</p> <p>4 October 26th, 2022, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Can you tell me what date</p> <p>7 this article was published in Exhibit 29?</p> <p>8 A. According to the dateline,</p> <p>9 October 28th.</p> <p>10 Q. So when you published this, you knew</p> <p>11 that it was inaccurate that you claim you won a</p> <p>12 temporary restraining order which forced Judge</p> <p>13 Randy Deering to allow the filming of witnesses</p> <p>14 unless the judge felt the filming would</p> <p>15 compromise the integrity of the trial, correct?</p> <p>16 MR. ROBINSON: Objection to form.</p> <p>17 BY MS. SARK:</p> <p>18 Q. Do you want me to ask it</p> <p>19 differently? Derek, would you like me to ask</p> <p>20 it differently?</p> <p>21 A. Please ask the question again.</p> <p>22 Q. Okay. So this article was published</p> <p>23 October 28th, 2022, correct?</p> <p>24 A. This article was published</p> <p>25 October 28th, 2022.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. And in this article, you say that 2 you won a temporary restraining order, which 3 forced Judge Deering to allow the filming of 4 witnesses unless the judge felt the filming 5 would compromise the integrity of the trial; is 6 that accurate?</p> <p>7 A. It is accurate.</p> <p>8 Q. Okay. But that is not true, right?</p> <p>9 A. It is true. There was an entry on 10 October 25th, 2022, by the Fourth District, 11 that said that Judge Deering would have to hold 12 hearings.</p> <p>13 And there was a subsequent hearing 14 held on the 26th. And you were present on 15 speakerphone for that hearing.</p> <p>16 Q. But the October 26th, 2022 judgment 17 entry revised the October 25th, 2022 judgment 18 entry, correct?</p> <p>19 A. The October 6th (sic) judgment entry 20 revised the order issued on October 25th.</p> <p>21 Q. I think you said October 6th. 22 October 26th?</p> <p>23 A. October 26th revised the order for 24 October 25th, correct.</p> <p>25 Q. So when you published this article</p>	<p style="text-align: right;">Page 72</p> <p>1 testimony to be filmed, right?</p> <p>2 A. Sorry. Could you re-ask your 3 question?</p> <p>4 Q. To your knowledge, there was no 5 exception that ever permitted Jake Wagner's 6 testimony to be filmed, correct?</p> <p>7 A. Correct.</p> <p>8 Q. To your knowledge, there was no 9 exception that ever permitted Jake Wagner's 10 testimony to be streamed, correct?</p> <p>11 A. Correct.</p> <p>12 Q. To your knowledge, there was no 13 exception ever permitted that would allow Jake 14 Wagner's testimony to be videotaped, correct?</p> <p>15 A. Could you re-ask the question?</p> <p>16 Q. Yeah.</p> <p>17 To your knowledge, there was never 18 any exception that permitted Jake Wagner's 19 testimony to be videotaped?</p> <p>20 A. That's correct.</p> <p>21 Q. And, to your knowledge, there was 22 never any exception that permitted Jake 23 Wagner's testimony to be recorded, correct?</p> <p>24 A. With the exception of the court 25 reporter, that is correct.</p>
<p style="text-align: right;">Page 71</p> <p>1 on October 28th, 2022, you knew that the 2 judgment entry from October 26th, 2022, stated 3 that Judge Deering did not have to hold a 4 hearing regarding witnesses who opt out of 5 being filmed, videotaped, recorded, or 6 photographed, correct?</p> <p>7 A. Yes. The entry was revising the 8 order from the 25th that said that he had to.</p> <p>9 Q. That said he had to what?</p> <p>10 A. Hold a hearing on Wednesday morning. 11 Well, it didn't say Wednesday 12 morning, but he held -- he chose to hold the 13 hearing on Wednesday morning.</p> <p>14 Q. Let me ask this again.</p> <p>15 When you published this on 16 October 28th, 2022, this news article, you knew 17 what the judgment entry from October 26th, 2022 18 said, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Which said, the trial judge is not 21 required to hold a hearing or make evidentiary 22 findings, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. Okay. To your knowledge, there was 25 nothing that ever permitted Jake Wagner's</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. The third paragraph down in that 2 article you published, Exhibit 29, it states, 3 The Guardian received a portion of Jake 4 Wagner's testimony on his first day on the 5 witness stand.</p> <p>6 A. So that's paragraph five, but in 7 paragraph three on that page.</p> <p>8 Q. Correct.</p> <p>9 A. And you would -- it says, The 10 Guardian received a portion of Jake Wagner's 11 testimony on his first day on the witness 12 stand. That is correct.</p> <p>13 Q. So I thought you had stated 14 previously that you received audio recording 15 from Jake Wagner's testimony from his first and 16 second day on the witness stand; is that 17 correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And then the next sentence says, The 20 Guardian wants to disclose that the audio was 21 not recorded by a member of the media and was 22 submitted to the Guardian's newsroom by a 23 courthouse source who is authorized to have 24 their cell phone in the room.</p> <p>25 Is that accurate, what I read?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. Yes.</p> <p>2 Q. Was the audio provided to you, specifically or the newspaper?</p> <p>4 A. As answered in -- for request for documents and your interrogatories, it was left on my desk between the late evening of the 25th and the 26th.</p> <p>8 Q. You weren't present during the first day of Jake Wagner's testimony, correct?</p> <p>10 A. That is correct. I was out of the country.</p> <p>12 Q. So how did you know the recording was from the first day?</p> <p>14 A. Based on the reporting from other media outlets, it was clear that the words that he was stating -- because he had been directly quoted by some of the other media outlets, specifically the Cincinnati Enquirer had directly quoted Mr. Wagner. Those quotes were verbatim in the audio.</p> <p>21 Q. So if you had the recording and you could directly quote it, why did you not choose to directly quote it instead of publishing the recording of Jake Wagner's testimony?</p> <p>25 A. I'm sorry. Can you re-ask or</p>	<p style="text-align: right;">Page 76</p> <p>1 Wagner?</p> <p>2 A. Can you re-ask the question, please?</p> <p>3 Q. Yes.</p> <p>4 Did you know the person, prior to trial, who recorded the testimony of Jake Wagner?</p> <p>7 MR. MEZIBOV: I'm going to object to the form of the question --</p> <p>9 MS. SARK: Okay.</p> <p>10 MR. MEZIBOV: -- the substance of it. I think it's a little confusing. I'm not sure whether you're asking him whether he knew beforehand --</p> <p>12 MS. SARK: Okay.</p> <p>15 MR. MEZIBOV: -- that somebody was going to record it.</p> <p>17 MS. SARK: I can rephrase it.</p> <p>19 MR. ROBINSON: We need to know, you know, whether he even knows who the person was.</p> <p>21 MS. SARK: Right. And that's what I'm trying to get at. Yeah, yeah, yeah.</p> <p>23 BY MS. SARK:</p> <p>24 Q. So, clearly, somebody recorded the testimony of Jake Wagner and provided that to</p>
<p style="text-align: right;">Page 75</p> <p>1 rephrase the question?</p> <p>2 Q. Sure.</p> <p>3 Since you had the recording of Jake Wagner's testimony, why did you choose not to, like other news sources, directly quote it, and instead publish the actual testimony of Jake Wagner?</p> <p>8 A. Well, it was ten minutes of audio. I'm not a transcriptionist. And, frankly, we have learned that our demographic likes to watch videos and audio instead of reading lengthy transcripts. That is a trend in society today for news publications worldwide.</p> <p>14 And so the video -- there is no need to, in my judgment, personal judgment, there's no need to quote it when somebody can simply click play above it and listen to it.</p> <p>18 Q. But you could have directly quoted Jake Wagner's testimony, correct?</p> <p>20 A. Well, sure. Yes.</p> <p>21 Q. Prior to this trial, do you -- strike that.</p> <p>23 Prior to the trial, did you know the person who, in this case is the unidentified source, who recorded the testimony of Jake</p>	<p style="text-align: right;">Page 77</p> <p>1 you, correct?</p> <p>2 A. That is correct.</p> <p>3 Q. That's what you're claiming, correct?</p> <p>5 A. That is what happened, yes.</p> <p>6 Q. The person who recorded the testimony, did you know that person prior to the trial of Jake Wagner?</p> <p>9 MR. MEZIBOV: I think the confusion is whether you're asking him did he know, before the trial, that a person was going to record it --</p> <p>13 MS. SARK: No.</p> <p>14 MR. MEZIBOV: -- or did he learn after the --</p> <p>16 MS. SARK: Did he know the actual person. He's claiming somebody recorded the testimony.</p> <p>19 MR. MEZIBOV: Right.</p> <p>20 MS. SARK: Did he know the person who recorded the testimony?</p> <p>22 MR. MEZIBOV: Okay.</p> <p>23 MR. ROBINSON: I think we need a foundation of whether he knows who recorded it before we can know if he knew</p>

<p style="text-align: right;">Page 78</p> <p>1 them before it was recorded.</p> <p>2 MS. SARK: Okay.</p> <p>3 MR. MEZIBOV: That's the confusion.</p> <p>4 BY MS. SARK:</p> <p>5 Q. So do you know who recorded the</p> <p>6 testimony of Jake Wagner?</p> <p>7 A. I have my speculations, but if I did</p> <p>8 know, I would not be able to tell you.</p> <p>9 Q. And I don't want the names. I'm</p> <p>10 just asking if you know who the person is that</p> <p>11 recorded Jake Wagner's testimony?</p> <p>12 A. As I stated, I have my speculations.</p> <p>13 And if I did know, I would not be able to tell</p> <p>14 you.</p> <p>15 Q. Okay. That still doesn't answer my</p> <p>16 question. I need a yes or no.</p> <p>17 Do you know who the person is that</p> <p>18 recorded Jake Wagner's testimony?</p> <p>19 A. My answer to your question is, I</p> <p>20 have speculation. And if I did or did not</p> <p>21 know, I would not be able to tell you.</p> <p>22 That is my answer.</p> <p>23 Q. When you say you have speculations,</p> <p>24 what are your speculations based upon?</p> <p>25 A. We live in a small community. We</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. Do you have actual knowledge</p> <p>2 as to who recorded the testimony of Jake</p> <p>3 Wagner?</p> <p>4 A. I was out of the country. I wasn't</p> <p>5 present for the recording.</p> <p>6 Q. That wasn't my question.</p> <p>7 Do you have actual knowledge who</p> <p>8 recorded the testimony of Jake Wagner?</p> <p>9 A. Again, with all respect, I was not</p> <p>10 present for the recording, so I could not tell</p> <p>11 you who was recording or not recording.</p> <p>12 MS. SARK: Can we go off the record</p> <p>13 for a minute?</p> <p>14 (Off the record.)</p> <p>15 MR. MEZIBOV: Your questions are</p> <p>16 getting to an area which we may need to</p> <p>17 invoke privilege. It's under Ohio</p> <p>18 Revised Code 2739.2.</p> <p>19 MS. SARK: Okay.</p> <p>20 MR. MEZIBOV: That's the Shield Law.</p> <p>21 MS. SARK: Okay.</p> <p>22 MR. MEZIBOV: We don't have any</p> <p>23 problems with the questions you've asked</p> <p>24 to this point.</p> <p>25 MS. SARK: Okay.</p>
<p style="text-align: right;">Page 79</p> <p>1 have sources. And not everyone would have</p> <p>2 access to the courtroom, particularly on the</p> <p>3 days of testimony.</p> <p>4 I believe the courtroom's capacity,</p> <p>5 after the fire marshal was called, was</p> <p>6 somewhere in the vicinity of 90. So we know</p> <p>7 that it was down to a pool of 90 people.</p> <p>8 Q. So you will not answer yes or no</p> <p>9 whether you knew who the person was that</p> <p>10 recorded the testimony?</p> <p>11 MR. MEZIBOV: I'm going to object,</p> <p>12 because I think -- if you allow me</p> <p>13 this -- I think what he's telling you is</p> <p>14 he can speculate as to who it is, but</p> <p>15 that does not -- that's not the same as</p> <p>16 having actual knowledge of who did it.</p> <p>17 MS. SARK: And that's my question,</p> <p>18 yes or no, because if he -- if he doesn't</p> <p>19 have actual knowledge, his answer would</p> <p>20 be no, I don't know who did it.</p> <p>21 MR. MEZIBOV: I don't think you've</p> <p>22 asked him if he had actual knowledge.</p> <p>23 Maybe I'm wrong.</p> <p>24 Why don't you ask him that question?</p> <p>25 BY MS. SARK:</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. MEZIBOV: And he's told you he</p> <p>2 has suspicions.</p> <p>3 But what we're going to object to is</p> <p>4 any question which is intended to or</p> <p>5 seeks to unpack those suspicions.</p> <p>6 MS. SARK: Okay.</p> <p>7 MR. MEZIBOV: They're based on who</p> <p>8 he may thinks.</p> <p>9 MS. SARK: Yeah.</p> <p>10 MR. MEZIBOV: So just please</p> <p>11 understand that we would invoke that</p> <p>12 privilege.</p> <p>13 MS. SARK: That's fine.</p> <p>14 MR. MEZIBOV: Okay.</p> <p>15 MS. SARK: That's fine. Sounds</p> <p>16 good.</p> <p>17 BY MS. SARK:</p> <p>18 Q. Okay. So ask my question again.</p> <p>19 Do you have actual knowledge as to</p> <p>20 who recorded the testimony of Jake Wagner?</p> <p>21 A. I do not.</p> <p>22 Q. Okay. So your understanding was</p> <p>23 that the recording was just left on your desk,</p> <p>24 correct? The recording of Jake Wagner's</p> <p>25 testimony was just left on your desk, correct?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. That is correct.</p> <p>2 Q. Did this person reach out, prior to 3 leaving the recording on your desk? Scratch 4 that.</p> <p>5 Did this person contact you prior to 6 leaving the recording on your desk?</p> <p>7 MR. MEZIBOV: You can answer that.</p> <p>8 A. You're assuming that I know the 9 person.</p> <p>10 BY MS. SARK:</p> <p>11 Q. I'm -- I'm asking if anybody 12 contacted you about the recording of Jake 13 Wagner's testimony, prior to you receiving it.</p> <p>14 A. I was -- I was not contacted prior 15 to. I walked in to my desk, and there it was.</p> <p>16 Q. Okay. So I am going to bring up 17 what we will list as Exhibit 30.</p> <p>18 And I am going to play this in its 19 entirety.</p> <p>20 (The video was played.)</p> <p>21 MR. MEZIBOV: How long is this?</p> <p>22 MS. SARK: It is 13 minutes,</p> <p>23 14 minutes. I'm asking questions 24 throughout.</p> <p>25 MR. MEZIBOV: May we take a --</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes.</p> <p>2 Q. Okay. (The video was played.)</p> <p>3 BY MS. SARK:</p> <p>4 Q. So let's stop it right there. 5 So you said, previously, nobody 6 contacted you prior to providing the recording 7 of Jake Wagner's testimony, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. So why did you say, in your 10 interview, that you had an email from a source 11 regarding Jake Wagner's testimony being 12 recorded?</p> <p>13 A. I had just gotten in from -- another 14 trip from Bogota. This -- I was actually in an 15 Airbnb in Orlando. I had been up for several 16 hours. As you can see, I was quite exhausted.</p> <p>17 So I don't recall. A lot of this 18 interview there's projection and insinuations 19 is that just simply are not factual to the 20 facts of the actual proceedings and complaint 21 in this case.</p> <p>22 Q. So you lied in the interview; is 23 that correct?</p> <p>24 A. I didn't lie knowingly. It was a</p>
<p style="text-align: right;">Page 83</p> <p>1 MS. SARK: Yeah. Yeah, absolutely.</p> <p>2 MR. MEZIBOV: -- make a run?</p> <p>3 MS. SARK: Absolutely.</p> <p>4 MR. MEZIBOV: Thank you.</p> <p>5 (A recess was taken from 2:07 to 2:15.)</p> <p>6 BY MS. SARK:</p> <p>7 Q. I'm just going to play it for a 8 couple minutes, then I'll ask some questions.</p> <p>9 (The video was played.)</p> <p>10 BY MS. SARK:</p> <p>11 Q. Do you recall this interview?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Who was this interview with?</p> <p>14 A. The Young Turks.</p> <p>15 Q. Which -- what is the Young Turks?</p> <p>16 A. It is a news organization.</p> <p>17 Q. Did they contact you about this 18 interview?</p> <p>19 A. I have an existing relationship with 20 this organization.</p> <p>21 I don't recall who contacted who, 22 how it got on their radar, if I sent to them or 23 what.</p> <p>24 Q. Okay. Did this interview occur 25 after you voluntarily turned yourself in?</p>	<p style="text-align: right;">Page 85</p> <p>1 very heated live interview, which was very 2 stressful. It was hard to remember and recall 3 all the facts at the time.</p> <p>4 Q. So did you receive an email from an 5 individual regarding the testimony of Jake 6 Wagner?</p> <p>7 A. Upon reflection, no.</p> <p>8 Q. Let me -- let's look at Exhibit 27 9 really quickly. And it will be Interrogatory 10 Number 3 on page 3.</p> <p>11 And Interrogatory Number 3 says, 12 State how the audio of Edward Jake Wagner's 13 testimony was provided to you (via email, in 14 person, etc.)</p> <p>15 Response: A copy of the audio was 16 left on my desk while I was away.</p> <p>17 Is that a correct reading of 18 Interrogatory Number 3 and your response?</p> <p>19 A. Yes. And the difference, Casey, 20 between this interrogatory request for 21 admissions and the audio that you're playing, 22 is that the request for admissions is under 23 oath, and I do not lie under oath. I would not 24 lie under oath. Whereas, the audio was not 25 under oath.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. But you still lied?</p> <p>2 A. Not knowingly.</p> <p>3 Q. Interrogatory Number 6, on the next page, states, Provide the date you received the recording, from an unidentified source, of Edward Jake Wagner's testimony.</p> <p>7 Your response: I found a copy of the recording on my desk sometime between the late evening of October 25th, 2022, and the morning of October 26th, 2022.</p> <p>11 Is that an accurate reading of Interrogatory Number 6 and your response?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know if -- tell me about how you discovered the audio on your desk.</p> <p>16 A. I walked in and there it sat.</p> <p>17 Q. When you say there it sat, do you mean a jump drive? Do you mean a CD?</p> <p>19 A. What we would know as a jump drive or a flash drive.</p> <p>21 Q. Does your office have cameras?</p> <p>22 A. At that time, no.</p> <p>23 Q. So how did that person get into your office to leave the audio recording?</p> <p>25 A. I don't know. I was out of the</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No.</p> <p>2 Q. Okay. Let's -- are you fine if we -- well, let's play a little bit more, and then we'll --</p> <p>5 (The video was played.)</p> <p>6 BY MS. SARK:</p> <p>7 Q. Okay. So I'm going to fast-forward this a little bit, unless you want to play it in its entirety, Mr. Myers.</p> <p>10 A. I'm sorry. What is the question?</p> <p>11 Q. Are you fine if we forward through this, or would you like to play it in its entirety?</p> <p>14 MR. MEZIBOV: Just forward what you want to ask questions.</p> <p>16 MS. SARK: Okay.</p> <p>17 MR. MEZIBOV: Then we can have it played back.</p> <p>19 MS. SARK: Okay.</p> <p>20 BY MS. SARK:</p> <p>21 Q. I don't have my glasses on, so I need to scooch it over.</p> <p>23 (The video was played.)</p> <p>24 BY MS. SARK:</p> <p>25 Q. Okay. You said the person who</p>
<p style="text-align: right;">Page 87</p> <p>1 country.</p> <p>2 Q. Does your desk have your name on it?</p> <p>3 A. I can't recall if I had a nameplate at the time or not.</p> <p>5 Q. So you don't know how that person just found your desk and put the audio recording on it, correct?</p> <p>8 A. I am unaware if the person knew whose desk it was or wasn't. Like I said, I wasn't privy to the placement of it.</p> <p>11 Q. Did you have exterior cameras --</p> <p>12 A. No.</p> <p>13 Q. -- at that time?</p> <p>14 A. No, we did not.</p> <p>15 Q. And you weren't present at your office when this person dropped off the audio recording, correct?</p> <p>18 A. That is correct.</p> <p>19 Q. Did you ever ask anyone to record the testimony of Jacob Edward Wagner?</p> <p>21 A. No.</p> <p>22 Q. Did you ever tell anyone you would compensate them with money or any other incentive to record the testimony of Jacob Edward Wagner?</p>	<p style="text-align: right;">Page 89</p> <p>1 recorded this was not a journalist; is that accurate?</p> <p>3 A. Yes.</p> <p>4 Q. And let's go back to Exhibit 29, the article you wrote in the Scioto Valley Guardian. And it's the third paragraph on the second page.</p> <p>8 The Guardian received a portion of Jake Wagner's testimony on his first day on the witness stand.</p> <p>11 That second sentence states, The Guardian wants to disclose that the audio was not recorded by a member of the media and was submitted to the Guardian's newsroom by a courthouse source who's authorized to have their cell phone in the room; is that accurate?</p> <p>17 MR. ROBINSON: Objection to form.</p> <p>18 BY MS. SARK:</p> <p>19 Q. Is that what the second sentence in the third paragraph reads for Exhibit 29?</p> <p>21 A. That is what it reads.</p> <p>22 Q. Okay. So if you -- strike that.</p> <p>23 Your testimony today is that you do not have actual knowledge as to who recorded the testimony of Jacob Edward Wagner; is that</p>

<p style="text-align: right;">Page 90</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. So then how can you explain that in</p> <p>4 your article you stated that the individual is</p> <p>5 not a member of the media and was authorized to</p> <p>6 have their cell phone in the courtroom?</p> <p>7 A. Members of the news media were not</p> <p>8 authorized to have their cell phones in the</p> <p>9 courtroom.</p> <p>10 So speaking on behalf of the ethics</p> <p>11 of all journalists nationwide, I can state that</p> <p>12 none of us would violate the code or the order</p> <p>13 of the judge, knowingly.</p> <p>14 Therefore, I had worked alongside</p> <p>15 these people for six weeks; some of them I had</p> <p>16 known for many years.</p> <p>17 Q. But you took your cell phone into</p> <p>18 the courtroom, right?</p> <p>19 A. When?</p> <p>20 Q. During the incident with Jason</p> <p>21 Frazier?</p> <p>22 A. In the acting capacity of the pool</p> <p>23 reporter, that is correct.</p> <p>24 Q. So you didn't know, for a fact, when</p> <p>25 you published this article, that the person who</p>	<p style="text-align: right;">Page 92</p> <p>1 I have no reason to believe, for a</p> <p>2 single second, that any of them, including</p> <p>3 myself, would violate the Court order.</p> <p>4 Q. Were -- was the general public</p> <p>5 permitted to have their cell phones in the</p> <p>6 courtroom?</p> <p>7 A. I'm not sure. I know some of the</p> <p>8 family members and the victims' advocate had</p> <p>9 their phones.</p> <p>10 Q. In this article, you also say that</p> <p>11 you -- the recording of Jake Wagner's testimony</p> <p>12 was submitted by a courthouse source who was</p> <p>13 authorized to have their cell phone in the</p> <p>14 room, correct?</p> <p>15 A. That is what it reads, yes.</p> <p>16 Q. So if you don't know who recorded</p> <p>17 the testimony of Jake Wagner, how can you</p> <p>18 affirmatively say that it was a courthouse</p> <p>19 source authorized to have their cell phone in</p> <p>20 the courtroom?</p> <p>21 A. As I previously stated, we have</p> <p>22 audio from the testimony --</p> <p>23 Q. Uh-huh.</p> <p>24 A. -- that was clearly recorded from</p> <p>25 within the courtroom. And I felt it was</p>
<p style="text-align: right;">Page 91</p> <p>1 recorded this was not a member of the media,</p> <p>2 did you?</p> <p>3 A. Can you restate your question,</p> <p>4 please?</p> <p>5 Q. Sure.</p> <p>6 Your testimony today is that you do</p> <p>7 not have any actual knowledge as to who</p> <p>8 recorded the testimony of Jake Wagner, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. So you can't say that this</p> <p>11 individual was not a member of the media, can</p> <p>12 you?</p> <p>13 A. I felt comfortable in my recording</p> <p>14 to say that no member of the news media -- that</p> <p>15 I had worked alongside my colleagues long</p> <p>16 enough to know that none of us would ethically</p> <p>17 violate the order or any ethics or Court order.</p> <p>18 So I felt comfortable putting that</p> <p>19 in my article, and I feel comfortable saying</p> <p>20 that today.</p> <p>21 The journalists I worked with are</p> <p>22 respectable, reputable journalists. Some of</p> <p>23 them have very high accolades and awards and</p> <p>24 have been in this industry for a very long</p> <p>25 time.</p>	<p style="text-align: right;">Page 93</p> <p>1 appropriate, and confident in my reporting,</p> <p>2 when I authored this article known as</p> <p>3 Exhibit 29, that it was not a member of the</p> <p>4 news media, because these are people who I know</p> <p>5 quite well, and none of us would smuggle an</p> <p>6 audio recording device in.</p> <p>7 Therefore, it only left a courtroom</p> <p>8 source who was authorized to have their cell</p> <p>9 phone in the room.</p> <p>10 Q. But couldn't it have been someone in</p> <p>11 the general public that recorded the testimony</p> <p>12 of Jake Wagner?</p> <p>13 MR. MEZIBOV: Objection.</p> <p>14 Calls for speculation.</p> <p>15 BY MS. SARK:</p> <p>16 Q. Do you need me to repeat the</p> <p>17 question?</p> <p>18 A. No. I'm just thinking how to phrase</p> <p>19 the answer here.</p> <p>20 Courthouse source does not</p> <p>21 necessarily mean an employee of the government.</p> <p>22 A courthouse source could very well mean</p> <p>23 anybody within the confines of the building.</p> <p>24 Q. Well, who was authorized to have</p> <p>25 their cell phone in the courtroom during</p>

<p style="text-align: right;">Page 94</p> <p>1 testimony?</p> <p>2 A. I don't have a full list nor do I 3 know. But as I mentioned, I saw several 4 people, including the general public, defense 5 attorneys, police officers, victims' advocates, 6 and members of the family.</p> <p>7 Q. So you don't know who was permitted 8 to have their cell phone in the courtroom 9 during testimony?</p> <p>10 A. We know what the order states, is 11 that the media was not allowed.</p> <p>12 Q. And my question is: How can you 13 affirmatively state, then, in your article, 14 that the source who provided the recording was 15 authorized to have their cell phone in the 16 courtroom?</p> <p>17 MR. ROBINSON: I don't know if this 18 helps. It says, it was submitted to the 19 Guardian by a courthouse source.</p> <p>20 MS. SARK: Right.</p> <p>21 MR. ROBINSON: Not that it was 22 recorded by a courthouse source.</p> <p>23 MS. SARK: Okay.</p> <p>24 THE WITNESS: That's what I was 25 trying to say. I was waiting for her to</p>	<p style="text-align: right;">Page 96</p> <p>1 recording of Jake Wagner, assuming that they 2 are two separate people, correct?</p> <p>3 A. I had my suspicions, but if I did 4 know, I could not tell you.</p> <p>5 Q. Okay. Do you suspect that the same 6 person recorded and submitted the testimony of 7 Jake Wagner?</p> <p>8 A. I can't speculate one way or the 9 other.</p> <p>10 Q. Then how can you affirmatively say 11 in your article that the person who submitted 12 the recording of Jake Wagner was authorized to 13 have their cell phone in the courtroom?</p> <p>14 MR. MEZIBOV: Let me object again, 15 and I'm going to go back to what my 16 statement was earlier.</p> <p>17 We believe that under the statute 18 that we cited, the Ohio Shield Law, that 19 Mr. Myers is privileged not to answer questions that may lead to a chain of evidence producing the source.</p> <p>20 MS. SARK: Yes. And I understand 21 that. But he is claiming he doesn't even know the source.</p> <p>22 So my question is, then, how can you</p>
<p style="text-align: right;">Page 95</p> <p>1 lay the foundation, but thank you.</p> <p>2 BY MS. SARK:</p> <p>3 Q. So is the person who submitted the 4 recording different from the person who 5 recorded Jake Wagner's testimony?</p> <p>6 MR. MEZIBOV: To your knowledge. If 7 you know.</p> <p>8 A. I don't know.</p> <p>9 BY MS. SARK:</p> <p>10 Q. And then my question goes back to, 11 if you don't know who -- scratch that. 12 You don't know who recorded the 13 testimony of Jake Wagner, correct?</p> <p>14 A. I have my speculations.</p> <p>15 Q. Okay. You don't know who 16 recorded -- who submitted the recording of Jake 17 Wagner's testimony, correct?</p> <p>18 MR. ROBINSON: You can answer.</p> <p>19 A. Can you ask the question again, 20 please?</p> <p>21 BY MS. SARK:</p> <p>22 Q. You don't know who recorded the 23 testimony of Jake Wagner, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. You don't know who submitted the</p>	<p style="text-align: right;">Page 97</p> <p>1 affirmatively say in your article that 2 you know it is someone who is authorized 3 to have their cell phone if you don't 4 know who the source is.</p> <p>5 MR. MEZIBOV: Well, I think he's -- 6 I understand your question, but I think 7 he's answered it.</p> <p>8 He answered it by saying, I have 9 eliminated, in my mind, the entirety of 10 the journalists who were reporting on 11 this case.</p> <p>12 So that would have left somebody 13 else in that courtroom who was permitted 14 to bring a cell phone in, but he did not 15 know who it was.</p> <p>16 And he did not know whether it was a 17 member of the public or somebody else who 18 wasn't a journalist.</p> <p>19 So I think he was just trying to -- 20 that's his testimony -- limit the scope 21 of the universe that might have been the 22 source.</p> <p>23 BY MS. SARK:</p> <p>24 Q. So let me ask this. Was the general public permitted to</p>

<p style="text-align: right;">Page 98</p> <p>1 have their cell phones?</p> <p>2 A. I don't know. I saw members of the 3 general public have their cell phones, yes.</p> <p>4 Q. Who was authorized, to your 5 knowledge, to have their cell phones?</p> <p>6 A. I would not know. I saw several 7 people have their cell phones. If they were 8 authorized or not authorized, I'm unsure.</p> <p>9 To the best of my knowledge, it was 10 law enforcement officials, attorneys, the 11 victim witness, the court reporter, the court 12 producer for Court TV, who had been absent at 13 this time, and I'm not sure who else.</p> <p>14 Q. So when you published this article, 15 you really didn't know if the person who 16 submitted the testimony of Jake Wagner was 17 authorized to have their cell phone in the 18 courtroom?</p> <p>19 MR. MEZIBOV: Objection, subject to 20 my previous comments.</p> <p>21 But you can answer.</p> <p>22 A. Again, it's speculation, and I have 23 my ideas of who the source was, but if I did 24 know, I couldn't tell you.</p> <p>25 BY MS. SARK:</p>	<p style="text-align: right;">Page 100</p> <p>1 to answer my questions.</p> <p>2 And so I'm answering my questions 3 the way that I'm answering them and that is how 4 I have answered them, and that is how I'm going 5 to continue to answer them.</p> <p>6 Q. So you don't know who submitted the 7 recording of Jake Wagner's testimony?</p> <p>8 MR. MEZIBOV: Objection.</p> <p>9 Asked and answered.</p> <p>10 A. I have my projections and beliefs, 11 but I could not tell you if I did know.</p> <p>12 BY MS. SARK:</p> <p>13 Q. And you do not know who was 14 authorized to have their cell phone in the 15 courtroom, correct?</p> <p>16 A. As previously stated, I named a 17 series of people who had their phones in the 18 courtroom.</p> <p>19 (The video was played.)</p> <p>20 BY MS. SARK:</p> <p>21 Q. I think I'm done on that one. 22 Okay. Let's move on to your cell 23 phone.</p> <p>24 You claim that your cell phone was 25 illegally searched and seized in this matter,</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. So you made this affirmative 2 statement, that the audio was not recorded by a 3 member of the media and was submitted to the 4 Guardian's newsroom by a courthouse source who 5 is authorized to have their cell phone in the 6 room, just based on your assumptions, correct?</p> <p>7 A. I have full confidence in my 8 colleagues that they would not violate the 9 Court order. And, therefore, that's why I 10 wrote, no member of the media recorded it.</p> <p>11 As for who submitted it to the 12 newsroom was by a courthouse source, it was 13 clearly somebody who was within the courthouse 14 that had access to it. If they are one and the 15 same --</p> <p>16 Q. But this statement was just based on 17 your assumptions, correct?</p> <p>18 A. Again, I think I've answered your 19 question. I can answer and rephrase it 20 different ways.</p> <p>21 Q. I'm just looking for a yes or no.</p> <p>22 Was this statement based on your 23 assumptions?</p> <p>24 A. Well, I get that you're looking for 25 a yes or no, but you don't get to tell me how</p>	<p style="text-align: right;">Page 101</p> <p>1 correct?</p> <p>2 A. It was illegally seized, that is 3 correct.</p> <p>4 Q. And when did the illegal -- illegal 5 seizure occur?</p> <p>6 A. It was, I believe, around the -- let 7 me -- without giving a date, because I don't 8 want to misstate, it was the day of my 9 arraignment in the county court, or what most 10 counties would call their municipal court. I 11 believe it may have been November 2nd.</p> <p>12 Q. Do you recall where this happened?</p> <p>13 A. The seizure?</p> <p>14 Q. Yes.</p> <p>15 A. Yes. It happened at the 16 magnetometer in the lobby of the Pike County 17 Courthouse.</p> <p>18 Q. Okay. And before you went 19 through -- we'll call it the metal detector. 20 Before you went through the metal detector, did 21 you have to take things out of your pockets?</p> <p>22 A. Yes.</p> <p>23 Q. What did you have to take out of 24 your pockets?</p> <p>25 A. I emptied everything out of my</p>

<p style="text-align: right;">Page 102</p> <p>1 pockets. I don't know what they would expect 2 you to take out, but I always took out 3 everything.</p> <p>4 Q. Okay. Did you take out your cell 5 phone?</p> <p>6 A. Yes.</p> <p>7 Q. And where did you place your cell 8 phone?</p> <p>9 A. There was a video of it. I don't 10 recall. They had bins. It probably had gone 11 into a bin or it might have laid directly on 12 the conveyor belt. I don't recall.</p> <p>13 Q. Okay. And then walk me through what 14 happened after your cell phone either was just 15 in a bin or went through the conveyor belt.</p> <p>16 A. Yeah. So there was a man by the 17 name of Captain Burchett sitting at the desk, 18 manning the security desk that day.</p> <p>19 Mr. Burchett has -- I'm picking up 20 my items, I believe, from the conveyor belt or 21 from the dish or whatever, and -- or perhaps he 22 had it in his hand. I can't recall.</p> <p>23 But some statements were made. And 24 I'm paraphrasing here, but the statements were 25 made, you need to take that back outside, by</p>	<p style="text-align: right;">Page 104</p> <p>1 A. That's correct. I would have taken 2 everything out.</p> <p>3 Q. And you go through the metal 4 detector, correct?</p> <p>5 A. Yeah. My belt is what led the metal 6 detector to go off.</p> <p>7 Q. I don't judge. My high heels do it 8 every time, too.</p> <p>9 A. You see there, Mr. Burchett hands me 10 everything.</p> <p>11 Q. Let me pause it.</p> <p>12 Is that your cell phone that he 13 places behind him?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So after it went through the 16 conveyor belt, you were talking to Captain 17 Burchett, and he puts your cell phone behind 18 him, correct?</p> <p>19 A. Yeah. Our dialogue back and forth, 20 as I was paraphrasing, was he needs -- he says 21 to me, you need to take it back outside.</p> <p>22 And I said, I'm going down to the 23 media room. We're obviously permitted to have 24 our cell phones.</p> <p>25 Q. Uh-huh.</p>
<p style="text-align: right;">Page 103</p> <p>1 Mr. Burchett.</p> <p>2 And I said, I'm going down to the 3 media room, not upstairs.</p> <p>4 And he says, no. You need to take 5 it back outside.</p> <p>6 And I said, again, I'm going to the 7 media room where we're allowed to have our 8 phones.</p> <p>9 And he said, on second thought, I 10 think I have a search warrant for this. And he 11 placed it behind him.</p> <p>12 And I proceeded to go to the media 13 room without my cell phone.</p> <p>14 Q. After your phone went through the 15 conveyor belt, did you ever put it back on your 16 person?</p> <p>17 A. I can't recall. Like I said, we 18 have CCTV video of that. If you want to play 19 it to refresh my memory, that would help.</p> <p>20 Q. Yeah. We'll play that. We will 21 label this next one as Exhibit 31.</p> <p>22 (The video was played.)</p> <p>23 BY MS. SARK:</p> <p>24 Q. So you're seen there emptying out 25 your pockets, correct?</p>	<p style="text-align: right;">Page 105</p> <p>1 A. And I reiterated that twice, I 2 believe.</p> <p>3 And then he said, on second thought, 4 I think I have a search warrant for this. And 5 he placed it behind him.</p> <p>6 Q. Okay.</p> <p>7 A. So the -- the brief exchange that 8 you cannot hear but that you see occurring, is 9 that of what I just stated.</p> <p>10 MS. SARK: Let me just look over 11 some notes really quickly. We're almost 12 done. I probably have less than 13 five minutes left.</p> <p>14 So we'll just go off the record.</p> <p>15 (A recess was taken from 2:46 to 2:47.)</p> <p>16 BY MS. SARK:</p> <p>17 Q. Okay. Let's go back to Exhibit -- 18 I'm sorry -- Exhibit 27. And it is 19 Interrogatory Number 4 on page 3.</p> <p>20 And it states, Interrogatory Number 21 4: The Complaint, in footnote 2, claims that 22 you believe and therefore aver that the county 23 prosecutor represented to a third party on the 24 date of the dismissal that he was not in favor 25 of the criminal prosecution against you and you</p>

<p style="text-align: right;">Page 106</p> <p>1 had no intention of further pursuing the 2 matter. Please provide the name of the 3 individuals you obtained this information from. 4 Your response, Deborah Barrington. 5 Is that an accurate reading of 6 Interrogatory Number 4 in your response? 7 A. Correct. 8 Q. Who is Deborah Barrington? 9 A. Deborah Barrington was part of my defense team that we called the dream team. She was stand-in counsel. 12 Obviously, these proceedings move very fast when one is arrested, and the arraignment happened fairly quickly. 15 Ms. Barrington is of local counsel in Chillicothe, which is about 15 minutes north of Pike County, where my arraignment was supposed to be held. 19 None of my members of my team were privy to have availability on their schedule to attend the arraignment, which was within a couple of days, if not, I think, the next day, couple of days after my surrender. 24 So it was recommended that we find local counsel to act as stand-in counsel.</p>	<p style="text-align: right;">Page 108</p> <p>1 the felony trial is taking place in the common 2 pleas. 3 So I leave the county court, and I go down to the county courthouse to resume my reporting of the news trial. And specifically to ask for my laptop, because it was no longer online at that time. And I had not been served a copy of a receipt of a search warrant, so I was unaware that it had been seized. 10 The cell phone was seized by Mr. Burchett. And it was quite an ordeal, a very traumatizing experience to get a replacement cell phone through my phone carrier and have my number ported over. 15 So for a number of days after the cell phone seizure, I was operating on a brand-new phone that I had to purchase from my phone carrier on a temporary phone number. 19 Eventually, after much headache and explaining to the phone carrier what had happened, they were able to port my cell phone number from the seized device into the new device. 24 Once that happened, my phone started to populate with numerous text messages from</p>
<p style="text-align: right;">Page 107</p> <p>1 Ms. Barrington came with high recommendation, 2 and she stood in as local counsel. And she joined our team at that moment. 4 Q. Okay. So who do you believe -- and 5 I mispronounced her name. I apologize. 6 A. No, that's okay. 7 Q. Who do you believe Deborah spoke 8 with regarding your criminal prosecution? 9 A. Ms. Barrington told me that she spoke with, at the time, Assistant Attorney -- Prosecuting Attorney Mike Davis. 12 Q. And what did she tell you -- strike 13 that. 14 Can you paraphrase the conversation 15 that she stated to you she had with the 16 assistant prosecutor? 17 A. Certainly. So the cell phone had 18 been seized by Captain Burchett -- 19 Q. Uh-huh. 20 A. -- shortly after my arraignment. 21 Two different buildings, of course. So we got 22 the -- the arraignment happening down in county 23 court, which is in a separate building in 24 downtown, and then we've got the courthouse, 25 which is where the federal -- or, excuse me --</p>	<p style="text-align: right;">Page 109</p> <p>1 various individuals. One of those individuals 2 in text message was Ms. Barrington, who said, I 3 have some news. Give me a call. 4 I called her. Of course, this is 5 two -- I'd say about two to three weeks later 6 after the arraignment and the seizure of the 7 cell phone. And she says, oh, I just wanted to 8 let you know -- and I'm paraphrasing. I just 9 want to let you know I spoke to Mr. Davis, who 10 is the assistant prosecuting attorney in your 11 case. He's heir apparent to become prosecutor 12 in January. 13 He pulled me aside during the 14 arraignment -- after the arraignment, after you 15 left, and said that he has no intention on 16 pursuing this charge to the grand jury when he 17 takes office in January. 18 Q. But he was not the county prosecutor 19 at the time of that conversation, correct? 20 A. That's correct. He was the 21 assistant prosecuting attorney and heir 22 apparent to the position. 23 He was charged with the criminal 24 prosecution of cases within the county court, 25 which is where the arrangement took place. And</p>

<p style="text-align: right;">Page 110</p> <p>1 that is why he was present that day on behalf 2 of the prosecutor's office.</p> <p>3 Q. Going back to your earlier 4 testimony, you stated that the recordings of 5 Jake Wagner, the two day -- two days of the 6 recordings, were on a laptop that has since 7 broke, correct?</p> <p>8 A. Yes, that's what I said.</p> <p>9 Q. So in October of 2022, did you have 10 two separate laptops?</p> <p>11 A. October of 2022? Was that the same 12 month of the trial? I'm sorry.</p> <p>13 Q. That was the month of Jake Wagner's 14 testimony.</p> <p>15 A. Yeah. So the company and myself had 16 various laptops. I, personally, had my laptop.</p> <p>17 We had a laptop that we were leasing 18 for the purposes of the trial only, because we 19 didn't want to expend several thousand dollars 20 to purchase a laptop.</p> <p>21 So for the purposes of the trial, it 22 was much more affordable for us to pay -- I 23 think it was like 15 bucks or something a week 24 for the purpose of the trial, with the intent 25 to return the laptop at the end of the trial.</p>	<p style="text-align: right;">Page 112</p> <p>1 because I would need my laptop after hours to 2 conduct my personal business, to conduct work 3 after hours.</p> <p>4 The way that our systems were set up 5 within the media room, it just was not 6 conducive to unplug everything.</p> <p>7 So I made the decision to -- we 8 could either purchase a MacBook laptop in the 9 range of 2-, \$3,000, or we could lease one for 10 a few weeks.</p> <p>11 Q. And that was leased through 12 RENT-2-OWN, correct?</p> <p>13 A. That's correct. So I made the 14 decision, instead of dropping \$3,000, that we 15 would expend a few hundred dollars and lease 16 the laptop for the purposes of the trial.</p> <p>17 And we -- I made that decision. And 18 that laptop was placed in the media room to be, 19 what we'll call, master control of the feed 20 that would then feed to the internet and to the 21 viewers back home on social media. And that 22 was the laptop that was seized.</p> <p>23 Q. The recordings of Jake Wagner's 24 testimony that you received were only uploaded 25 to your personal laptop, correct?</p>
<p style="text-align: right;">Page 111</p> <p>1 So we were just leasing a laptop. And then I 2 had my laptop.</p> <p>3 My associate editor had his laptop. 4 My sales representative had her laptop. And 5 then I imagine we probably had an extra laptop 6 or two around the office, as we normally do.</p> <p>7 Q. So the laptop that was seized was 8 the one that you were renting for approximately 9 15 bucks a week, correct?</p> <p>10 A. Yeah. And, again, the purpose was, 11 we needed -- I could not always be present at 12 the courthouse for things. I would either need 13 to step out to the bathroom or go run an errand 14 or something.</p> <p>15 I took this case very personal, the 16 case of -- the Wagner case, because I had been 17 following it from the very first day that it 18 happened.</p> <p>19 I wanted to be present for the 20 trial. I didn't want to hire outside help to 21 come in. I wanted to be a part of this very 22 historic trial. So I made the decision to task 23 myself with being the person who would be 24 present.</p> <p>25 But I could not tie up my laptop,</p>	<p style="text-align: right;">Page 113</p> <p>1 A. It -- you know, personal, company 2 laptop, whichever you want to label it as, it 3 was one and the same. I used it for work.</p> <p>4 I would, you know -- who owned 5 possession of the laptop would be up for 6 debate.</p> <p>7 Q. It was not the laptop that you were 8 using that was being rented through RENT-2-OWN?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay.</p> <p>11 A. We needed a second computer. I 12 needed access to my primary computer. And then 13 we also needed to have a stationary computer 14 for the feed.</p> <p>15 Q. When you published the article on 16 Scioto Valley Guardian's website and Scioto 17 Valley Guardian's Facebook page, did you upload 18 that from the computer that was being rented or 19 the other computer, be it your personal or 20 company laptop?</p> <p>21 A. Probably -- I don't recall.</p> <p>22 Q. Okay. You knew, when you received 23 the recording of Jake Wagner's testimony, that 24 he had opted out of being filmed, recorded, 25 videotaped, and photographed, correct?</p>

